Supreme Court of the United States

October Term 1952

No. 331 MISC.

CAMILO WESTON LEYRA,

Petitioner,

—against—

THE PEOPLE OF THE STATE OF NEW YORK,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK AND BRIEF IN SUPPORT THEREOF

FREDERICK W. SCHOLEM,
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Counsel for Petitioner.

INDEX

Petition

PAGE

Questions Certified by Court of Appeals 2

As to the Alleged Confessions 16

Undisputed Facts 41

Statutes Involved 42

Authorities Relied Upon 45

Basis of Jurisdiction 45

Reasons Relied Upon for Allowance of the Writ 46

Appendix "A" 49

Appendix "B" 64

Brief

Opinions Below 69

Statement of Jurisdiction, Questions Presented and Facts 69

Argument 70

Errors Relied Upon 87

Summary of Argument 87

Point I—

The subsequent confessions were so close in point of time and circumstance to the first, that they should have been ruled out, for the same reasons which vitiated the first confession and made it inadmissible 89

PAGE

POINT II—
Without the confessions improperly received in evidence the State has failed to make out a case 96

CONCLUSION 97

Appendix "C" 99

Appendix "D" 102

Appendix "E" 103

Appendix "F" 106

Appendix "G" 110

CASES CITED

	Page in Petition	Page in Brief
Adamson v. California, 332 U. S. 46	45	
Ashcraft v. Tennessee, 322 U. S. 154	45	87
Bram v. United States, 168 U. S. 352	45	
Brown v. Mississippi, 297 U. S. 278	45	87
Chambers v. Florida, 309 U. S. 227, 229	45	85
Couty v. Alabama, 309 U. S. 629	45	89
Gallegos v. Nebraska, 342 U. S. 55	45	92
Haley v. Ohio, 332 U. S. 596	45	76, 87
Harris v. South Carolina, 338 U. S. 68	45	
Lisenba v. California, 314 U. S. 219	45	87
Lomax v. Texas, 313 U. S. 544	45	
Lyons v. Oklahoma, 322 U. S. 596	45	80
Malinski v. New York, 324 U. S. 401	45	87

	Page in Petition	Page in Brief
McNabb v. United States, 318 U. S. 332, 342, 343	45	71
People v. Cummings, 153 App. Div. 93, affd. 209 N. Y. 283	40	
People v. Ferola, 215 N. Y. 285	40	
People v. Grossman, 184 App. Div. (3rd Dept.) 724, 728	18	
People v. Kurtz, 42 Hun (N. Y.) 335, reargument denied 42 Hun 637	18	83
People v. Sweetin, 325 Ill. 245		83
Pierre v. Louisiana, 306 U. S. 352	45	
Rochin v. California, 342 U. S. 165	45	89
Stroble v. California, 343 U. S. 181	45	91
Turner v. Pennsylvania, 338 U. S. 62	45	
United States v. Carnignan, 342 U. S. 36	45	
Vernon v. Alabama, 313 U. S. 547	45	
Ward v. Texas, 316 U. S. 547		87
Watts v. Indiana, 338 U. S. 49	45	93
White v. Texas, 310 U. S. 530	45	

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No.

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THE PEOPLE OF THE STATE OF NEW YORK,

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Camilo Weston Leyra, respectfully shows the following:

The petitioner was indicted in the County Court of Kings County, for murder in the first degree. The first count of the indictment charged the petitioner with having wilfully, and feloniously, and with malice aforethought, struck and killed his mother, Catherine Leyra, on or about January 10, 1950 (fols. 17, 18).

The second count of the indictment charges that, on or about January 10, 1950, the petitioner wilfully, and feloniously, and with malice aforethought struck and killed Camilo Leyra, Sr.; the petitioner's father, with a hammer.

The first trial was had before the Honorable Samuel S. Leibowitz, County Judge of Kings County, and a jury, and the trial began on April 24, 1950. On May 14, 1950, the jury rendered a verdict of murder in the first degree under both counts of the indictment.

On June 1, 1950, the Court imposed the death sentence under both counts of the indictment. The date of the execution was fixed for July 2, 1950.

Upon the first appeal the Court of Appeals reversed the conviction and ordered a new trial (*People* v. *Leyra*, 302 N. Y. 353; see Appendix A).

The second trial began on December 10, 1951, before Judge Leibowitz and a jury. On December 21, 1951, the jury rendered a verdict of murder in the second degree, under the first count of the indictment and murder in the first degree under the second count of the indictment (fol. 144).

Upon the appeal from the second conviction, the Court of Appeals affirmed the judgment by a divided Court of four to two. The majority opinion was written by Judge Dye and was concurred in by Judges Lewis and Desmond. Judge Froessel concurred in the affirmance under the provisions of §542 of the Code of Criminal Procedure.* The dissenting opinion was written by Judge Fuld and concurred in by Chief Justice Loughran (see Appendix B).

Questions Certified by Court of Appeals

"Upon the appeal herein there were presented and necessarily passed upon questions under the

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* Code of Criminal Procedure, Section 542. After hearing the appeal, the court must give judgment, without regard to technical errors or defects or to exceptions which do not affect the substantial rights of the parties.

Constitution of the United States: whether the defendant was deprived of due process guaranteed by the Fifth and Fourteenth Amendments thereof in the admission into evidence of the confessions of the defendant and in the admission into evidence of the testimony given by defendant at a prior trial. This court held that the rights of the defendant under the Fifth and Fourteenth Amendments of the Constitution of the United States had not been violated or denied."

At about 3:30 o'clock in the afternoon of January 10, 1950, Camilo Leyra, Sr., about seventy-five years of age, and Catherine Leyra, his wife, about eighty years of age, parents of the petitioner, were found dead in their apartment at 105 Quincy Street, Brooklyn, New York. The deceased had died about 8:30 that morning due to fractured skulls inflicted by a hammer or like instrument. There were no eye-witnesses to the crime. Your petitioner is fifty-four years of age, married and the father of three children.

The case against the petitioner rests solely upon alleged confessions claimed to have been made on the night of Friday, January 13, 1950, in the captain's room of the 88th Precinct station house, Brooklyn, N. Y. These confessions were obtained only after petitioner had been grilled by the police for four days and nights, during all of which time he had emphatically denied any connection with the crime. The petitioner had but two hours sleep during this period and when the police were unable to force a confession the petitioner was induced to sign an "*agreement*" to remain indefinitely in police custody (fol. 685; Deft's Ex. 1). The district attorney then employed Dr. Max Helfand, a psychiatrist who had studied in Vienna

and Munich and was experienced in the art of hypnosis, a form of mental coercion. It was only after being exposed to the technique of this psychiatrist that the petitioner confessed. Among other methods used by this psychiatrist was to fraudulently represent himself to be petitioner's physician called in to treat his sinus condition; to promise petitioner he would not be prosecuted for murder in the first degree if he confessed; to threaten to give petitioner an injection to make him talk; and to finally put suggestions in petitioner's mind and words in his mouth. The methods employed by Dr. Helfand are graphically described by Judge Froessel of the Court of Appeals in a unanimous opinion for reversal upon the first appeal (see *People* v. *Leyra*, 302 N. Y. 353, at pp. 359-363; Appendix A). Petitioner was illegally held in police custody for four days and was not arraigned until the morning of the fifth day. The manner in which these confessions were obtained will be discussed later in this petition.

It is significant that the police and district attorney were present on the floor below and listened to and heard the acts of coercion, suggestions, threats and promises of leniency meted out to the petitioner by Dr. Helfand as same came over the loudspeaker attached to the microphone concealed in the inquisition room. In the recording of what took place during Dr. Helfand's inquisition, the transcript records numerous instances of "whispers" and "noises" and "interruptions". Commenting on this Judge Froessel in his opinion on the first appeal, 302 N. Y. 353, at page 361, said:

> "What happened during these 'noise' periods we do not know; why the doctor suddenly asked defendant after an interruption: 'Do you feel better?'; followed by another interruption, is unexplained.

> In any event, the doctor continued with this significant question: 'These people are going to throw the book at you unless you can show that in a fit of temper you got so angry that you did it—otherwise they toos [toss] premeditation in and it's premeditation. See?' The import of this language should not be overlooked."

Upon the second trial the court charged the jury that the acts by Dr. Helfand was mental coercion as a matter of law. The court also charged the jury that Dr. Helfand, the duly authorized agent of the district attorney, had promised the petitioner that if he confessed he would not be prosecuted for murder in the first degree. The court further charged that "all other evidence in the case, even if accepted by the jury as true, is insufficient upon which to predicate a verdict of guilty". The court left for the jury's consideration as to whether or not the mental coercion and the promises carried over into the alleged subsequent confessions made to Captain Meenahan, Herrschaft, and Assistant District Attorneys Andreozzi and Gitlin (fols. 2671-2687).

Dr. Clarence Bellinger, renowned psychiatrist, of over forty years experience, testified that the mental coercion practiced upon the petitioner as well as the promises made to the petitioner by Dr. Helfand carried over and affected all subsequent confessions.

It is important to note that these subsequent confessions followed immediately—without a break or interruption—after Dr. Helfand had completed his unconscionable and illegal technique and were all made within a period of four hours thereafter. Petitioner contends that these alleged confessions should be considered as one document

all infected with the virus of mental coercion and contaminated with false promises of leniency.

On both trials and the two appeals to the Court of Appeals the petitioner was represented by Mr. Harry G. Anderson and Mr. Frederick Scholem, appointed by the Court, the petitioner being without funds to employ counsel.

The testimony of the People's witnesses during the second trial was practically identical with that adduced at the first trial. In reversing the conviction of the first trial, the Court in a unanimous opinion (*People* v. *Leyra*, *supra*) written by Judge Froessel stated at page 359:

> " * * * This doctor, unconnected with the police department or the prosecutor's office, had been called to the police station by the District Attorney, who outlined the case to him. The doctor had also been 'briefed' by Captain Meenahan, as is manifest from the questions he asked. He agreed to talk to defendant upon condition that there be no one else in the room; he knew, however, that the room was wired and that the interview would be electrically reported by a recording machine, which was specially set up that day. The police and the District Attorney were in the basement of the police station, where they overheard the entire interview and permitted it to continue uninterruptedly.
>
> "The doctor spent an hour or an hour and a half with defendant. A transcript of the recorded interview shows that he told defendant at the outset: 'I'll tell you what the purpose of my talk to you is. I want to see if I can help you.' To this defendant answered: 'Yes, Doctor.' The doctor asked him about his sinus condition and the treatment

he had had, and in the course of the interview said: 'I'm your doctor'. The transcript further discloses that on at least forty occasions the doctor in one way or another promised to help defendant, and on one occasion said: 'I know you are in a little trouble. We do sometimes things that are not right, but in a fit of temper or anger we sometimes do things that we aren't really responsible for. I want to see whether or not you did something but which you've done in a fit of temper or anger. Do you understand me? A. Yes'. Defendant told the doctor he was 'very tired. I had two hours sleep. Just now they woke me up. That's since Tuesday. Well, there were questions, after questions after question by the thousands. * * * The only thing is I'm very tired. I didn't feel as tired before I went to bed as I do now. You know (interruption)'. This interruption was said to be noise, but no one knows what else defendant said here."

And at pages 360, 361:

"It happened numerous times throughout the recording. So with whispers, identified by the doctor as sounds made by defendant when he did not speak audibly. In these respects the statement is definitely incomplete. Defendant then stated that his sinus was 'bothering' him 'something terrible', and that for the past two years he had averaged over a hundred hours of work a week without vacation. After more conversation the following took place:

Q. I want you to recollect and tell me everything. I am going to make you remember and recollect back and bring back thoughts—thoughts which you think you might have forgotten. I can

make you recollect them. It's entirely to your benefit to recollect them because, you see, you're a nervous boy. You got irritable and you might have got in a fit of temper. Tell me, I am here to help you. A. I wish you could, Doctor.

Q. I am going to put my hand on your forehead and as I put my hand on your forehead, you are going to bring back all these thoughts that are coming to your mind. I am going to keep my hand on your forehead and I am going to ask you questions and now you will be able to tell me.

"This technique—of promising help, such as 'We'll help', 'Everybody will help you', 'We're with you one hundred percent', 'We'll play ball with you'; placing his hands on defendant's head; 'making' him recollect; minimizing the homicides by suggesting they were done in a fit of temper saying, 'Morally, you are not to be condemned, right? A. Right'; commanding defendant to look at him, to open and close his eyes; suggestions to defendant as to what he should say—runs all through the transcript of the recording.

"The doctor was making some progress in breaking down defendant and getting some admissions, knowing that defendant was under 'tension', 'pale', his mouth was 'dry', and despite defendant's frequent 'I can't remember', 'Doc, I'm trying so hard', 'Doctor, I'm exhausted, so please be patient.' The doctor kept at him: 'See, I can make you talk very truly. I can give you an injection now'. Near the end of the interview the following occurred:

Q. You have a much better chance to play ball (Noise) than if you say you don't remember. If you tell me that you were in a fit of anger, that you were angry, that you just swung the hammer but if you tell me that you don't remember, then you will be working against yourself. Where will it get you? A. At that point there, I was so mad. I was like white hot metal. I was so mad. I was never mad at anyone in my life * * * (Noise) * * *. Q. Do you feel better? * * * (Noise) * * * Do you want coffee? A. I drank coffee all night long * * * (Noise) * * * (asterisks *sic*).

"What happened during these 'Noise' periods, we do not know; why the doctor suddenly asked defendant after an interruption, 'Do you feel better?', followed by another interruption, is unexplained. In any event, the doctor continued with this significant question: 'Q. These people are going to throw the book at you unless you can show that in a fit of temper you got so angry that you did it. Otherwise they toss premeditation in and it's premeditation. See?' The import of this language should not be overlooked.

"After some more coffee, defendant asked to speak to Captain Meenahan, whereupon he made a full and detailed confession to both homicides, in the course of which he stated he lost his temper and was overcome by a fit of anger and rage. Following his confession to Captain Meenahan, he told his partner, Herrschaft, who had been directed by a detective to be present, that he 'did it'. Thereafter and during the same evening, defendant again confessed these crimes to two assistant district attor-

neys, who took the written statement from him offered in evidence. He was fingerprinted that night and arraigned the next morning.'"*

And at page 362:

"We are thus squarely confronted with the question as to whether or not the admissions in defendant's statement to the doctor were properly received and submitted to the jury, as evidence from which they might determine his guilt. We think not, and, under the circumstances here disclosed, the trial court should have so determined as a matter of law; it is the duty of the court to reject a confession if a verdict that it was freely made would be against the weight of the evidence. People v. Doran, 246 N. Y. 409, 159 N. E. 379; People v. Valletutti, 297 N. Y. 226, 78 N. E. 2d 485. Bearing in mind the undisputed setting in which this interview was arranged and recorded, while defendant was in custody of the police; defendant's physical and mental condition at the time, already alluded to; the psychiatrist, calling himself defendant's doctor, playing upon the latter's natural fears and hopes, pressing his hands upon defendant's head with accompanying commands, and suggesting details to an unwilling mind by persistent and unceasing questioning; informing defendant that he was not morally responsible; making deceptive offers of friendship and numerous promises, express and

* Footnote ours. The questioning of petitioner began on Tuesday afternoon and continued until 11:00 P.M. Friday night. Petitioner was not arraigned until Saturday morning, four days after the interrogation began. Captain Meenahan "persuaded" the petitioner to sign an "agreement" to remain in custody of police indefinitely (fol. 685, Deft's Ex. 1).

implied; giving assurances in a pseudo-confidential atmosphere of physician and patient; and all the attendant circumstances taken together—this interview was a subtle intrusion upon the rights of defendant and was tantamount to a form of mental coercion, which, despite the good faith of the prosecution, we may not countenance here. No such intrusion may be sanctioned in a system of law which is based upon the presumption of innocence, surrounded by the constitutional safeguards afforded to every individual. The doctor here did not tell defendant that he had been called into the case by the District Attorney; that the latter and the police were listening to their conversation; that defendant could have his own doctor or lawyer or any one else present; he conspicuously omitted to tell defendant that he was under no duty to speak or that anything he might say could be used against him. See People v. Fernandez, 301 N. Y. 302, 333, 93 N. E. 2d 859; People v. Esposito, 287 N. Y. 389, 398, 39 N. E. 2d 925, 928, 142 A. L. R. 956.

" * * * this Court is unwilling to assent to the doctrine that representatives of the State may thus employ a relationship they established between the doctor and this defendant, which is of a character that our public policy holds privileged, Civil Practice Act, §352, in order to obtain a confession out of defendant's own mouth without warning and under the circumstances here disclosed. People v. Fernandez, supra; People v. Esposito, supra; People v. Furlong, 187 N. Y. 198, 212, 79 N. E. 978, 983. If a physician may be thus used, then why not a lawyer or a clergyman? The essential fairness which is supposed to form the warp and woof of

our fabric of justice would certainly be wanting if practices such as these were to be approved. See People v. Levan, 295 N. Y. 26, 64 N. E. 2d 341."

And at page 364:

"We have held that an involuntary confession is by its very nature evidence of nothing. People v. Valletutti, supra, 297 N. Y. at page 231, 78 N. E. 2d, at page 487. Moreover, our Federal Constitution, 14th Amendt., is a bar to the conviction of any individual in our courts of justice by means of a coerced confession. Ashcraft v. State of Tennessee, supra. We have a like provision in section 6 of article I of our State Constitution. A denial of due process has been defined as the failure to 'observe that fundamental fairness essential to the very concept of justice. * * * Such unfairness exists when a coerced confession is used as a means of obtaining a verdict of guilty'. Lisenba v. People of State of California, 314 U. S. 219, 236-237, 62 S. Ct. 280, 290, 86 L. Ed. 166. Not only is the use of a coerced confession in obtaining a conviction a violation of due process, but, if such confession is admitted in evidence, that is sufficient to void the conviction regardless of other evidence which might nevertheless demonstrate guilt. Malinski v. People of State of New York, 324 U. S. 401, 65 S. Ct. 781, 89 L. Ed. 1029, see, Note, 93 L. Ed. 115; Watts v. State of Indiana, 338 U. S. 49, 69 S. Ct. 1347, 93 L. Ed. 1801; Turner v. Commonwealth of Pennsylvania, 338 U. S. 62, 69 S. Ct. 1352, 93 L. Ed. 1810; Harris v. State of South Carolina, 338 U. S. 68, 69 S. Ct. 1354, 93 L. Ed. 1815; Haley v. State of Ohio, 332 U. S. 596, 68 S. Ct. 302, 92 L. Ed. 224; Ashcraft v. State of Tennessee,

supra; Chambers v. State of Florida, 309 U. S. 277, 60 S. Ct. 472, 84 L. Ed. 716.

"We recognize that due process is not lacking where upon facts permitting different conclusions it is left for the jury, under a proper submission, to say whether or not there was coercion, Malinski v. People of State of New York, supra; Lisenba v. People of State of California, supra; Lyons v. State of Oklahoma, 322 U. S. 596, 64 S. Ct. 1208, 88 L. Ed. 1481, but here the method employed is not controverted and the statement itself is beyond dispute, for it is recorded. The transcript of the recording clearly discloses that the interview took place in an atmosphere of the utmost pressure, and in a manner and with a skill possible only to an experienced psychiatrist, unfamiliar with an accused's fundamental rights. As the prosecutor said of this psychiatrist in his summation; 'with his superior mental powers, his studies of psychology, he was able to accomplish what a brow-beating policeman might not have been able to obtain.' This was an eloquent tribute to the efficacy of mental coercion over physical.

"Torture of the mind is just as contrary to inherent fairness and basic justice as torture of the body. A confession by which a person forfeits his life must be grounded on reasoned and voluntary choice. We would have to close our minds to the plain import of what occurred to deny that here was a deliberate attempt to extract a confession through the ceaseless pressure of a skillful psychiatrist by his peculiar technique, claiming to be defendant's doctor, promising to help him, giving assurances

> and at the same time conducting an unrelenting interrogation of the exhausted accused. Aside from constitutional objections, we have not yet reached the stage where medical science, represented by an accord among its experts, establishes the trustworthiness of a confession induced by the means here adopted. See 3 Wigmore on Evidence (3d ed.), §841a; People v. Forte, 279 N. Y. 204, 206, 18 N. E. 2d 31, 32, 119 A. L. R. 1198. Due process of law guaranteed by our State and Federal Constitutions commands that no such practice as revealed by this record shall send an accused to his doom, regardless of the brutality of the crimes with which he is charged."

The second trial was had before Judge Samuel S. Leibowitz, who also presided over the first trial, and a jury. The jury rendered a verdict of murder in the first degree under the first count and murder in the second degree under the second count of the indictment. The trial court imposed a sentence of death upon the conviction under the first count of the indictment, and a sentence of from seventy-five years to life imprisonment under the second count of the indictment.

Upon the second appeal the Court of Appeals affirmed both judgments of conviction. The decision was rendered by a divided count of four to two. The prevailing opinion was written by Judge Dye and was concurred in by Judges Lewis and Desmond. Judge Froessel concurred for affirmance under Section 542* of the Code of Criminal Procedure.

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* Code of Criminal Procedure, Section 542:

> "After hearing the appeal, the court must give judgment, without regard to technical errors or defects or to exceptions which do not affect the substantial rights of the parties."

Judge Fuld dissented in an opinion in which Chief Judge Loughran concurred (see Appendix B).

Judge Fuld in his dissenting opinion wrote:

> "To see this case whole and in proper focus, it must be borne in mind that defendant's conviction rests solely upon his confessions and that the trial court so charged the jury, advising that, absent those confessions, 'defendant must be acquitted for the reason that the Court rules, as a matter of law, that all other evidence in the case * * * even if accepted by the jury as true, is insufficient upon which to predicate a verdict of guilty' " (see trial court's charge, fol. 2687).
>
> "The trial judge charged unequivocally that Dr. Helfand had promised defendant, 'in order to induce him to confess,' that he would not be prosecuted for murder in the first degree, that such promise was authorized by the District Attorney and that defendant confessed in reliance upon it. Consequently, as the trial court went on to charge, that confession was inadmissible as a matter of law. (See Code Crim. Pro., Sec. 395.) In view of that charge—which, of course, became the law of the case—it necessarily follows, as a matter of ineluctable logic, that any and all other confessions to the District Attorney or those associated with him in the investigation and prosecution of this very homicide, must also be deemed to have been induced by that promise, and likewise inadmissible. Accordingly, when the court further instructed the jury that it might find that the confessions to assistants of the District Attorney and to a police captain—made within an hour or two after immunity had

been promised—had not been induced by the promise, it pursued a course that was not only opposed to logic, but incompatible with the law of the case. That was error highly prejudicial to the defendant."

As to the Alleged Confessions

The case against the petitioner rests wholly upon alleged confessions and the trial court so instructed the jury (fols. 2671-2687). These alleged confessions were made on January 13, 1950, at the 88th Precinct station house in Brooklyn. Prior thereto, the petitioner was in the custody of the police; and, prior to the taking of the alleged confessions, the police had obtained a written consent from the petitioner to remain indefinitely in the custody of the police (fol. 685, Deft's Ex. 1). This illegal "consent", undoubtedly, was obtained by Police Captain Meenahan in order to excuse his failure to arraign the petitioner before a magistrate, as required under the provisions of the Code of Criminal Procedure (N. Y. Penal Law, §§1841, 1844).

At folio 2694 the trial court instructed the jury that the delay in arraigning the petitioner before a magistrate was illegal. The trial court, however, did not instruct the jury that the failure to arraign the petitioner as required by statute constituted a crime under the provisions of §1841 of the Penal Law (see *People* v. *Mummiani*, 258 N. Y. 395).

The efforts of Captain Meenahan to obtain a satisfactory confession having been unsuccessful, the district attorney personally employed Dr. Helfand, a psychiatrist, to further interrogate the petitioner. Dr. Helfand accepted the employment upon the condition that no one else be present during the interrogation of the petitioner.

Prior to this Dr. Helfand had been "briefed" by Captain Meenahan as to the nature of the case and the latter told Dr. Helfand what had previously been told him by the petitioner.

Dr. Helfand's interrogation of the petitioner took place on January 13, 1950, in a room on the upper floor of a station house. In accordance with the conditions exacted by Dr. Helfand, no one else was present in the room where the petitioner was questioned. A tape recorder and a loud speaker had been installed in a room on a lower floor of the station house by means of which those present could listen in upon the interrogation. Listening in were the district attorney in person, Acting Captain Meenahan and other detectives (fols. 674-675).

At the outset of the consideration of the alleged confessions made to Dr. Helfand, it is important for the Court to note that he concealed from the petitioner the fact that he was the district attorney's representative or that he was in any way associated with the prosecuting authorities but instead fraudulently represented himself to be petitioner's doctor. Furthermore, it is conceded that no warning was given by Dr. Helfand to the petitioner that he was at liberty to refuse to answer any questions or that any incriminating statements would be used against him.

The district attorney, as already stated, had listened to what was taking place between Dr. Helfand and the petitioner. The district attorney was not called as a witness and he in no way indicated disapproval of the methods employed by Dr. Helfand. Nor did he disavow any of the promises made by the doctor to the petitioner. There is no dispute that Dr. Helfand was employed by the district attorney who must be held to have approved the methods

employed by Dr. Helfand (*People* v. *Grossman*, 184 App. Div. [3rd Dept.] 724, 728; *People* v. *Kurtz*, 42 Hun [3rd Dept.] 335 and cases cited; reargument denied 42 Hun 637).

Upon the second trial Dr. Helfand was called as a witness by the district attorney (fol. 749) and gave testimony regarding his qualifications as a physician (fols. 754-758).

The attorney for the petitioner stated that he wished to examine Dr. Helfand on the *voir dire* (fols. 761-768). Among other things, Dr. Helfand testified at folio 777:

> Q. Now, in telling us about your qualifications, Doctor, did I understand you to testify that you studied in the University of Vienna? A. Yes, sir.

And at folios 1571-1573:

> Q. Were you asked this question in the last trial:
>
> "Q. How many experiments by medical men, psychiatrists, have you seen performed?" and did you give this answer: "A. Well, I witnessed experiments when I was in the University of Vienna conducted by Professor Schulderkauder. I also witnessed experiments conducted by Professor McDougall at Duke University. I have also witnessed experiments conducted in the University of Cardiff by Professor Graham Brown". Was that question asked of you and did you give that answer? A. Yes, sir.
>
> Q. * * * Were you asked this question: "Q. And would you say you have seen a number of experiments by medical men, not by vaudevillians performed in hypnosis, yes or no?" "A. Yes, I did". And then the next question was the one that I have previously asked? A. Yes.

> Q. So what is your testimony today, that you witnessed these experiments or you didn't witness these experiments at Duke University by Professor McDougall? A. Yes, I witnessed some scientific experiments pertaining to hypnosis but in animal hypnosis.

Dr. Helfand was examined by the district attorney and attested to the fact that he was summoned to the station house by the district attorney on January 13, 1950, at which time Dr. Helfand employed his illegal and unconscionable methods to obtain a confession (fols. 768-771).

The petitioner had already been questioned by the police for four days without arraignment with only two hours sleep. Petitioner said to Dr. Helfand, the authorized agent of the district attorney (fols. 780, 781):

> "* * * *I am very tired. I had two hours' sleep. Just now they woke me up. That is since Tuesday. Well, there are questions after questions by the thousands."* (Emphasis ours.)

The technique used by this psychiatrist to mentally coerce the petitioner may be summarized as follows:

> First: To fraudulently represent himself to be petitioner's doctor called to treat his sinus condition (fol. 802).
>
> Second: To promise petitioner he would not be prosecuted for murder in the first degree if he confessed (fols. 796-798).
>
> Third: To threaten to give petitioner an injection to make him talk (fol. 811).
>
> Fourth: To put suggestions and ideas in petitioner's mind and actual words in petitioner's mouth (fol. 843).

The following excerpts from the record are illustrative of the mental coercion practiced on the petitioner:

At folios 779, 780:

> " * * * 'Buddy, will you tell me something about yourself? I will tell you what the purpose of my talk to you is. I want to see if I can help you.' "
>
> " * * * 'I know you are in a little trouble. We do sometimes things that are not right, but in a fit of temper or anger we sometimes do things that we are not responsible for. I want to see whether or not you did something but which you have done in a fit of temper or anger.' "

And at folios 792-801:

> " * * * 'I want you to recollect and tell me everything. *I am going to make you remember and recollect back and bring back thoughts,* thoughts which you think you might have forgotten. *I can make you recollect them.* It is entirely to your benefit to recollect them because, you see, you're a nervous boy. You got irritable and you might have got in a fit of temper. Tell me, I am here to help you.' "
>
> " * * * *'I am going to put my hand on your forehead and as I put my hand on your forehead, you are going to bring back all these thoughts that are coming to your mind. I am going to keep my hand on your forehead and I am going to ask you questions and now you will be able to tell me.'* "
>
> " * * * *'I've got my hand on your forehead and I am making you tell me the truth. It's all for your benefit if you tell me everything. I am here to help you.'* "

" * * * 'I know you are trying hard but *I'm trying to help you.* I'm making your thoughts come back to you.' "

" * * * 'It's coming clear now. You will feel lots better after you tell me. It's all in a fit of argument. Speak up. Speak up. It's coming clear to you. *I have my* hand on your forehead.' "

" * * * 'It's coming all clear to you now. *I've got my hand on you. I'll make you think back.* All your thoughts are coming back to you.' "

" * * * 'Go ahead. Come on. Tell me what happened then. Come on, now. Speak up. You're going to feel lots better. *We're with you 100%.* Come on. Come on. *We'll help you.*

" * * * 'That's right, go ahead. Come on. You're going to feel lots better. *We're with you 100%.*

" * * * 'Sure, you can. Look at me. Open your eyes. Now you know what happened. Look at me. I know you know what happened.' And did the defendant answer: *'I can't think?'* A. That's right."

" * * * 'Come on now. Don't be afraid. Your conscience will be clear. *God will be with you, and everybody will help you if you tell the truth.* Everybody will help you, but nobody likes a liar, not even God. Come on, now. Tell the truth'. And did the defendant then answer: *'I can't think'?* A. That's right."

"Q. And then did you say to the defendant: 'Your father went for the paper; then you hit your mother, didn't you? With what did you, with a hammer? Your thoughts are coming back to you. What did

you use to hit your mother with?' And did the defendant answer to you: *'I loved my mother.'* A. That's right."

"Q. And then did you say right after that: 'Yes, I know you did. *You lost your temper.* Don't be afraid. *A lot of people do things that they are not responsible for while in a fit of temper.* You see?' And did the defendant make this answer: *'My mother was the only thing in the world'?* A. That's right."

"Q. Now, a little further down, Doctor, did you say to the defendant: 'Come on, yes, you can. Speak up. So you thought it would be the right thing to do what? Come on, you started now. Speak up. *Everybody will help you. You're a nice fellow.* You're a man now. You don't want to be a coward. *Everybody will help you. You were excited. You did it in a fit of anger.'* Did you say that to the defendant? A. Yes, I did."

"Q. And then further down, did you say: 'Look at me. Look at me.' And did he answer: 'Yes, Doc.'? A. Yes."

"* * * 'Your thoughts are coming into you; don't be afraid, Buddy. We're all with you 100%. We'll help you. We'll help you every way possible. *I'm your doctor. I'm going to help you.'* "

And at folio 806:

"* * * *'I am your doctor.'* "

And at folio 808-813:

"* * * *'If you will be honest with me, I will help you. Everybody thinks a lot of you. You're a nice man.'* "

" * * * 'That is because you are nervous, you see. Your conscience is bothering you. After you tell me and tell me the truth, then you will feel relieved. *We're all with you 100%.* Then you will be fine. *Now, let me put my hand on your forehead again',* and did the defendant say, *'It hurts so'?* A. Yes, sir."

" * * * 'Now, you listen to me. Listen to me and concentrate.' "

" * * * 'Sure, you can think. Only cowards can't think. You are not a coward. You can speak up. You know. You know. What you did. Come on now. Come on. *I have my hand on your forehead and your thoughts are coming back to you,'* and did he answer you, 'No, Doc, they don't'. A. Yes, sir."

" * * * 'You know you hit your mother first, you know you hit your mother on the head. Speak up. What did you do?' A. 'I don't know, Doctor'. A. That's right. Q. Then, did you say: 'Yes, you do. Speak up now. Speak up. See, I can make you talk very truly. *I can give you an injection now.* It's much better if you tell it to me this way. Come on, now, speak up'. and the answer, 'I can't think, Doctor'. Did he say that to you? A. Yes, sir."

And at folios 814-846:

" * * * *'I'm trying to help you* if you tell me the truth. *I am on your side. I am going to help you all I can.* Come on, now, Buddy. *Be a nice fellow. Put your hand here.'* "

" * * * 'Don't be afraid. *We're all with you. We want to help you.'* "

" * * * 'Just relax now and everything will come back to you. You know what happened. Everybody—I mean, these people know what happened. It's much better for you to come clean and play ball. Everybody thinks you are trying to hide something.' "

"Q. A little further on, did you say: 'I know you're trying. I'm trying with you because you're a nice fellow.' And did he answer, 'I just can't think'? A. Yes, sir."

" * * * 'Now, you think. All your thoughts will come back to you. Just think. Just relax. All your thoughts will come back to you. I have my hand on your head. Your thoughts are coming back to you. It's much better for you. You will get along much better and you will feel better.' "

" * * * 'You may as well tell us and we'll work with you. *We'll play ball with you. We'll help you if we can. It will make you feel better.* Come on now, speak up.' "

" * * * 'Sure you can. Open your eyes. Don't say you can't. Just look at me.' And did the defendant give you this answer: 'I just don't remember.' * * * Q. And did you say then: 'Sure you can.' And did he say: 'No. I can't think, Doctor.' A. That's right."

" * * * *'Buddy, it doesn't help you if you say you can't think when you know you did it, so you may as well tell us and get our help. If you don't tell us and get our help, I'll wash my hands of you.* All right, close your eyes and think hard. Just close your eyes now and your thoughts will come back

to you. All your thoughts are coming back to you. You're a nice fellow and you're excited; and in a fit of temper you said you were going to kill him when he comes back.' "

" * * * *'We are working with you.'* * * *'We are working with you. You are nervous. Just let me put my hand on your head and your thoughts will come in.'* "

" * * * *'I will help you, Buddy.'* "

" * * * 'I'll help you Buddy, *I am with you one hundred per cent, but you got to play ball with me.'* "

" * * * 'I'll help you. I've got my hand on your forehead and your thoughts are coming back to you'. Did you say that a little further down?"

" * * * 'You don't remember because you can't remember because if you were a bum or a robber or a burglar, I am making thoughts come back and *I am going to help you* and you are going to feel lots better.' "

" * * * 'Just concentrate. Now, listen to me, just concentrate.' * * * 'Just concentrate, and your thoughts will come back; just concentrate; just concentrate. Relax.' "

" * * * 'I want you to recollect your thoughts; tell me all the details. *I can make you talk.'* "

" * * * *'I am going to make you remember.'* "

" * * * *'We will make them come back to you.'* "

" * * * *'I am making your thoughts clear.'* "

" * * * 'All right, relax and think. *You stay here until your thoughts come back to you.'* "

" * * * 'Then did you say to the defendant a little further down: "Think and tell me." and did he say to you "She was just like a baby to me." A. Yes, he said that.' "

" * * * 'Just relax and your thoughts will come back to you because I have my hand on your forehead. Everything will be fine.' "

" * * * 'I am helping you to think; if you want to you can. There is only a question of wanting.' "

" * * * 'We know you are a nice man and I am trying to help you.' "

" * * * 'Take your time and relax. *Now open your eyes and look at me, just open your eyes—look at me,* your thoughts will come back; look at me and concentrate.' "

" * * * 'Everybody is with you 100%.' "

" * * * 'Just concentrate and your memory will come back to you.' "

" * * * 'I have got my hand on your forehead. Your thoughts will come back to you. Everything will be clear.' "

" * * * 'We are trying to help you. We are trying to help you. Your thoughts are coming in to you.' "

" * * * *I am going to make you remember.*"

" * * * *We will make them come back to you.*"

" * * * *I am making your thoughts clear.*"

" * * * All right, relax and think. *You stay here until your thoughts come back to you.*"

" * * * Then did you say to the defendant a little further down: Doctor 'Think and tell me.' And did he say to you: 'She was just like a baby to me.' A. Yes, he said that."

" * * * Just relax and your thoughts will come back to you because I have my hand on your forehead. Everything will be fine."

" * * * I am helping you to think; if you want to you can. There is only a question of wanting."

" * * * We know that you are a nice man and I am trying to help you."

" * * * Take your time and relax. Now open your eyes and look at me, just open your eyes—Look at me, your thoughts will come back; look at me and concentrate."

" * * * *Everybody is with you 100%.*"

" * * * Just concentrate and your memory will come back to you."

" * * * I have got my hand on your forehead. Your thoughts will come back to you. Everything will be clear."

" * * * We are trying to help you. We are trying to help you. Your thoughts are coming in to you."

" * * * Just close your eyes and it will all come back to you. Just close your eyes and relax."

" * * * Close your eyes and your thoughts will come back. Relax."

" * * * *I am going to make your mind recollect everything.* Your mind is getting clearer and

clearer; all your thoughts are coming back now. Now they're coming back."

" * * * Your mind is clear now. Speak up. Speak up. Now your mind is clear. Now speak up."

" * * * I can't remember anything about it at that point."

" * * * *If you tell us the details and come across like a good man, then we can help you.* We know that morally you were just in anger. *Morally, you are not to be condemned.* Right."

" * * * But you have to tell us the details, then we will know that you are above board and on the level. Otherwise, we just don't do nothing to you and you will get the worst of it."

" * * * You are a nice fellow. *I am willing to stay here with you and help you* but you have got to help yourself."

" * * * If you will just stop for a minute, you will remember, and your thoughts will come into you. And did he give you this answer: *'Doctor, I am exhausted, so please be patient.'* A. Yes, sir."

" * * * *You have got a much better chance to play ball"* * * *"Than if you say you don't remember. If you tell me that you were in a fit of anger, that you were angry, that you just swung the hammer, but if you tell me that you don't remember, then you will be working against yourself. Where will it get you?"*

" * * * *These people are going to throw the book at you unless you can show that in a fit of temper you got so angry that you did it. Otherwise they toss premeditation in and it's premeditation."*

"* * * Well, we are getting along very nicely. I am trying to straighten him out with his troubles."

"* * * *His mind is clear now. I made him concentrate. His mind is much clearer. You can take my seat, Captain.*"

There was thus presented to the jury an account of the methods employed by Dr. Helfand in obtaining the confession, methods which the Court of Appeals on the first appeal held to be mental coercion, unlawful and a violation of petitioner's constitutional rights. Judge Froessel pertinently wrote in his opinion in *People* v. *Leyra*, 302 N. Y. 353, at page 364:

"We recognize that due process is not lacking where upon facts *permitting different conclusions* it is left for the jury, under a proper submission, to say whether or not there was coercion, Malinski v. People of State of New York, supra; Lisenba v. People of State of California, supra; Lyons v. State of Oklahoma, 322 U. S. 596, 64 S. Ct. 1208, 88 L. Ed. 1481, but here the method employed is not controverted and the statement itself is beyond dispute, for it is recorded. The transcript of the record clearly discloses that the interview took place in an atmosphere of the utmost pressure, and in a manner and with a skill possible only to an experienced psychiatrist, unfamiliar with an accused's fundamental rights. As the prosecutor said of this psychiatrist in his summation: 'with his superior mental powers, his studies of psychology, he was able to accomplish what a brow-beating policeman might not have been able to obtain.' This was an eloquent tribute to the efficacy of mental coercion.

> "Torture of the mind is just as contrary to inherent fairness and basic justice as torture of the body. A confession by which a person forfeits his life must be grounded on reasoned and voluntary choice. We would have to close our minds to the plain import of what occurred to deny that here was a deliberate attempt to extract a confession through the ceaseless pressure of a skillful psychiatrist by his peculiar technique, claiming to be defendant's doctor, promising to help him, giving assurances and at the same time conducting an unrelenting interrogation of the exhausted accused. Aside from constitutional objections, we have not yet reached the stage where medical science, represented by an accord among its experts, establishes the trustworthiness of a confession induced by the means here adopted. See 3 Wigmore on Evidence [3d ed.], §841a; People v. Forte, 279 N. Y. 204, 206, 18 N. E. 2d 31, 32, 119 A. L. R. 1198. Due process of law guaranteed by our State and Federal Constitutions commands that no such practice as revealed by this record shall send an accused to his doom, regardless of the brutality of the crimes with which he is charged."

This technique was illegal and unconscionable. The disclosure of this interview by the psychiatrist violated Section 352 of the New York Civil Practice Act, being a privileged communication under these special circumstances and was so held by the Court of Appeals of the State of New York in its unanimous opinion reversing the first conviction (*People* v. *Leyra*, 302 N. Y. 353, 363; Appendix A). It might be significant to point out that this psychiatrist submitted a bill for $2,175. and actually received from the

Comptroller of the City of New York the sum of $1,600. for his unique services (fols. 1578, 1580).

This alleged confession to the psychiatrist, although barred by the Court of Appeals in reversing the first conviction in *People* v. *Leyra* (see Appendix A), was admitted in evidence over petitioner's objection (fol. 1674). All of the alleged confessions relied upon by the People to sustain the conviction were obtained during a period of four hours on the same night and only after exposure to Dr. Max Helfand, the psychiatrist, and continuous grilling by the police for several days without arraignment.

Dr. Helfand, after having successfully completed the technique of mental coercion on the petitioner, then transferred the coerced and suggestible petitioner to Captain of Detectives Meenahan by saying: "You can take my seat, Captain" (fol. 846). The mental coercion continued over to the captain who was acting as the surrogate or substitute of the psychiatrist (fol. 873). Captain Meenahan then stated to petitioner: *"He is a doctor. That is what you were promised. Anything you want—any help you want"* (fol. 2016).

Immediately upon Captain Meenahan's leaving the room, he sent in Herrschaft, petitioner's partner and a witness for the People, who remained just a few minutes but testified to a cryptic admission by the petitioner. It is significant that there is no wire recording of this admission, yet all other interviews and admissions were recorded and said interview was in the same wired room. It is also significant that Herrschaft denied, under oath, a written partnership agreement with petitioner, yet when same was produced by petitioner's counsel, admitted his signature affixed thereto (fols. 1057-1062; Deft's Ex. 2). Immediately after the claimed admission to petitioner's partner, this illegal in-

quisition was continued by two assistant district attorneys who did not disclose that either was an assistant district attorney, nor did either inform petitioner that he was under no duty to talk to them.

Dr. Clarence H. Bellinger, who had been appointed by the trial court, a diplomate of the American Board in both neurology and psychiatry, a physician with outstanding qualifications, who had been practicing for over forty years (fols. 867, 860), testified that the mental coercion practiced upon petitioner, as well as the promises made to petitioner, carried over into all subsequent confessions (fol. 2018):

> "Q. * * * Now, assuming further, Doctor, that the technique used by Dr. Helfand was mental coercion, can you say in your opinion and with reasonable certainty whether or not the mental coercion practiced upon the defendant by Dr. Helfand continued over into the statements made by the defendant to Captain Meenahan? A. In my opinion, it carried over from one to the other.
>
> "Q. Now, Doctor, assuming all the facts given to you in my first hypothetical question; and assuming, further, Doctor, that as soon as Captain Meenahan finished with the defendant, the Captain called in Herrschaft, the defendant's partner, who in turn took a seat in the Captain's room, and the Captain left the room and closed the door; and assuming, further, Doctor, that the defendant made certain statements to his partner Herrschaft, can you say in your opinion and with reasonable certainty whether the mental coercion practiced upon this defendant by the psychiatrist and neurologist continued over into the statements made, if any, by the defendant to the defendant's partner Herrschaft? A. In my opinion it carried over."

And at folio 2025:

> "Q. * * * Can you say in your opinion and with reasonable certainty whether or not the mental coercion practiced upon this defendant by said psychiatrist and neurologist continued over into the last statement given to the Assistant District Attorney? Can you, Doctor? A. I can.
>
> "Q. What is your opinion, Doctor. Did that mental coercion continue over? A. In my opinion, it did."

Dr. Bellinger's testimony was not in the slightest affected by the relentless cross-examination of the district attorney or by the cross-examination by the Court.

The Court in cross-examining Dr. Bellinger adduced the following at folios 2059-2060:

> "* * * Assume that his conversation with Dr. Helfand stopped at a certain point, that none of the details of the alleged assault upon the mother, and certainly none of the details of the alleged assault upon the father; and certainly none of the details at all as to what transpired after the accident were discussed between Dr. Helfand and this defendant, do you say that what he said later to Captain Meenahan about these matters was the result of suggestion?
>
> "The Witness: Yes, sir.
>
> "Q. From prompting? A. Yes, sir, I think they were.
>
> "Q. By Dr. Helfand? A. In my opinion—
>
> "Q. What? A. It is my opinion, it was the result of that coercion.
>
> "Q. I am not speaking of coercion. I am speaking of suggestion and promptings. A. Yes.

"Q. Were they the result of the promptings by Dr. Helfand? A. I think they were, yes."

Dr. John M. Murphy called by the People had been practicing psychiatry for less than ten years (fol. 888). He admitted that he did not know the meaning of a capital case, nor did he ever testify in one (fol. 894). Dr. Murphy never saw the petitioner before the trial, nor did he ever examine the petitioner, nor did he ever hear the petitioner's voice, since petitioner did not testify during the second trial. Dr. Murphy's testimony was completely destroyed during cross-examination when he was compelled to admit that the mental coercion carried over (fols. 906, 907).

Dr. Murphy testified for the People as follows (fols. 886-890):

"Q. You were in the court room on Thursday when Dr. Helfand testified, were you not, sir? A. Yes.

"Q. Did you listen intently to his testimony? A. Yes, I did.

"Q. Now, you heard the questions that were put by Dr. Helfand to this defendant and the defendant's answers, as they were related in the course of the examination by Dr. Helfand, by Mr. Scholem? A. Yes.

"Q. Now, Doctor, assuming that the actions of Dr. Helfand constituted mental coercion, can you say with reasonable certainty, doctor, whether or not that mental coercion would carry over into any subsequent interviews or statements made by the defendant to anybody else? A. I do not feel it would.

"*By the Court*:

"Q. The question is: Can you state with reason-

able certainty whether it would? Just answer yes or no. A. No.

"Q. Can you state whether it would or would not? A. I would state—

"Q. Don't tell us what your conclusion is. We will get to that later. There is a certain formality that you have to go through in putting these questions to experts. The first question that must be put to an expert is what you are being asked now: Can you state with reasonable certainty whether or not the mental coercion carried over into subsequent statements made by the defendant, if made? A. No.

"Q. Can you state—can you give your opinion? A. Oh, yes, I can state—I can give an opinion.

"Q. With reasonable certainty? A. Yes.

"The Court: Now.

"*By Mr. Cone*:

"Q. What is your opinion, doctor? A. My opinion is that it would not carry over."

On cross-examination Dr. Murphy went so far as to say that it was his opinion that mental coercion had not been exerted by Dr. Helfand. Upon recross-examination Dr. Murphy testified as follows (fols. 906-907):

"*By Mr. Scholem*:

"Q. Now, Doctor, did you hear Dr. Bellinger testify in court? A. I did.

"Q. You worked with Dr. Bellinger? A. I worked for him, yes.

"Q. You worked with him in Kings State Hospital? A. There is no Kings State Hospital.

"Q. Brooklyn State Hospital, is that correct? A. Yes.

"Q. You have the highest regard for Dr. Bellinger as a psychiatrist and neurologist, do you not? A. Yes, I do.

"Q. Now, Doctor, isn't it a fact that after mental coercion is practiced upon an individual, and someone in authority then takes the place or the seat of the previous examiner, of the psychiatrist that coerced the defendant, isn't it a fact that the person that takes that seat of the psychiatrist assumes the same position that the psychiatrist had and the mental thoughts of the defendant are carried over from the psychiatrist to the captain or the surrogate, as Dr. Bellinger expressed himself—the captain who took the exact same seat of the psychiatrist. Isn't that so, Doctor? A. That is right.

"*By the Court*:

"Q. Did you understand the question? A. If he is so directed; yes. He asked me to assume—

"Q. Speak up so I can hear you. A. He asked me if the authority of the psychiatrist could carry over to the captain or anybody else in his place.

"Q. That is not what he asked you.

"The Court (to the stenographer): Read the question (question was read).

"*By the Court*:

"Q. Do you understand the question? A. Yes, I think I do, your Honor.

"Q. Let us see if you understand. What is the question? A. I will give you my answer if you want.

"Q. I want first—I want to know if you understood the question, because it is a long question? A.

Yes; he asked me if I assumed that mental coercion was existing here and could it carry over from the psychiatrist, the mental thoughts of the psychiatrist would carry over to the captain so that the effect of the psychiatrist on the patient will be endowed upon the person who succeeded him—assuming, as he said, the fact that the man was mentally coerced. My answer to that, the power could be transferred over to the succeeding person if the psychiatrist so directed the patient to recognize the succeeding person as his substitute."

Upon redirect examination by the district attorney Dr. Murphy further testified (fols. 910-915):

"Q. In the testimony you have heard yesterday, when Dr. Helfand was examined on the stand did you hear any such direction? A. When it was brought out by Dr. Bellinger that the doctor said to 'take my chair' to the captain. That was the only direction. It was not a direction to the patient in my opinion. If there is any mental coercion, the doctor would have to express himself directly and talk directly to the patient to make the patient feel the compulsion of recognizing the captain as his successor.

"Q. Merely talking about taking over the chair, would that in and of itself have been enough to carry over a mental coercion if there were any? A. I do not feel it would; no.

"Q. Doctor, isn't it a fact that if mental coercion were practiced by Dr. Helfand, that he would have to remain there with the subject while any subsequent person exercised it, in order to maintain the mental coercion if any? A. Again I will have to

give you an answer that is a little bit more than a yes or no answer. It would depend entirely upon what directions the psychiatrist gave to the patient. If the psychiatrist said to the patient that any sort of mentally compulsive state that he was in should continue to the succeeding man, to talk freely to the succeeding man without his presence, then it could very well carry over without the psychiatrist's presence. If the report and contact between the psychiatrist and the patient was so strong that it was the psychiatrist's own personality, any mentally coercive powers that induced the patient to talk to the succeeding person, I would feel that the psychiatrist would have to be present in order to maintain the patient in the state of mental coercion.

"Q. In this case here, bearing in mind the testimony of Dr. Helfand on the stand concerning his actions with this defendant Leyra, then in your opinion, if there were any mental coercion practiced therein, it would not carry over, is that right, sir? A. That is right.

"Q. That was based on the facts you have already heard? A. From what I heard in court Thursday."

It is most significant that the district attorney deliberately failed to ask its own expert, Dr. Max Helfand, the psychiatrist who interrogated the petitioner and who observed his pallor, dryness of mouth, tension and exhausted condition, at the time of the mental coercion and promises were made, whether or not the mental coercion or promises or both carried over into the subsequent alleged confessions. This physician was in a superior position to verse an opinion on the subject.

In the final analysis the People's case rests entirely upon Dr. Murphy's wavering and unreliable opinion, which is referred to at page 27 of this petition. Dr. Murphy was obviously not in a position to take into consideration everything that took place when Dr. Helfand was questioning the petitioner at the police station two years previously. The recording device installed in the police station showed numerous "noises and whispers" proceeding from the room where Dr. Helfand was alone engaged in his unlawful methods to obtain a confession from petitioner. These methods were fully described by Judge Froessel in his opinion upon the first appeal (*People* v. *Leyra*, 302 N. Y. 353, 360, 361). This unscrupulous psychiatrist during these periods of "whispers and noises" might have given directions and commands to the petitioner and said and did things which he did not want recorded.

Dr. Murphy had never examined the petitioner and had never seen him before the trial. His entire opinion is based upon observing the petitioner during the trial which took place over two years after the mental coercion occurred. In the final analysis the State of New York demands that the life of petitioner be forfeit solely upon the weak and unreliable opinion of the People's witness, Dr. Murphy.

The petitioner testified on his own behalf during the first trial but did not take the witness stand at the second trial. Notwithstanding this fact, the petitioner was compelled to testify against himself by the technique pursued by the district attorney and sanctioned by the Court over petitioner's objection. The district attorney read into the record of the second trial testimony given by the petitioner during the first trial (1905, 1925).

The admission of this testimony petitioner contends was a violation of the Constitution of the State of New York,

Section 6, as well as a violation of the Fifth Amendment of the Constitution of the United States. It also violated Section 464 of the Code of Criminal Procedure (*People* v. *Ferola,* 215 N. Y. 285; *People* v. *Cummings,* 153 App. Div. 93, affd. 209 N. Y. 283).

The trial court in the present case instructed the jury as follows at folio 2678:

> *"I charge you, gentlemen, as a matter of law, that the so-called Helfand confession was not voluntarily made; that it was due to mental coercion practiced by the physician upon the defendant."* (Emphasis ours.)

And at folio 2682:

> *"In arriving at a solution of these problems I charge you that you are bound to consider the established fact that Dr. Helfand practiced illegal coercion upon the defendant and made authorized promises of leniency to him. The presumption is that such coercion and promise of leniency continued to affect the defendant's later confessions;* unless the prosecution has convinced you, beyond a reasonable doubt, from all the credible evidence in the case, that such coercion and promise of leniency did not extend over and affect the later confession made to Meenahan. Unless you are so convinced, the later confession made to Meenahan must be entirely disregarded and not considered by you as evidence of guilt." (Emphasis ours.)

And at folio 2687:

> *"Gentlemen, if all of the confessions are rejected by the jury, the defendant must be acquitted, for the reason that the Court rules, as a matter of law,*

that all of the other evidence in the case offered by the prosecution, even if accepted by the jury as true, is insufficient upon which to predicate a verdict of guilty.'' (Emphasis ours.)

The trial court charged the jury that, as a matter of law, Dr. Helfand, acting as the district attorney's agent, had stated to petitioner that, if he confessed, he would not be prosecuted for murder in the first degree (fols. 2678-2687). (Emphasis ours.)

Undisputed Facts

1. That petitioner was questioned by the police, day and night, practically without interruption, for four days. Petitioner was not arraigned until the fifth day after the questioning commenced.

2. That Dr. Max Helfand, who committed the acts of mental coercion and made the promises of help and leniency, was employed by and was the duly authorized agent of the district attorney.

3. That the police and district attorney were present on the floor below and listened to and heard the acts of coercion, interrogations, suggestions, threats and promises of leniency meted out to the petitioner by Dr. Helfand as same came over the loud speaker attached to the microphone concealed in the inquisition room.

4. That the district attorney did absolutely nothing to prevent his representative, Dr. Helfand, from continuing these acts of mental coercion, but actually permitted and sanctioned same.

5. That all of the alleged confessions were made on the night of the fourth day of the questioning; one after another without interruption, and only after petitioner was first exposed to the mental coercion practiced by Dr. Helfand, an expert in hypnosis and psychiatry.

6. That without the alleged confessions the indictment must be dismissed, since the law of the case under the trial court's charge to the jury is:

> " * * * that all other evidence in the case even if accepted by the jury as true, is insufficient upon which to predicate a verdict of guilty" (fol. 2687).

Statutes Involved

(A) Constitution of the United States,

Section 1 of the Fourteenth Amendment.

> " * * * nor shall any State deprive any person of life, liberty, or property, without due process of law, * * *."

(B) Article Five of the Constitution of the United States:

> " * * * nor shall be compelled in any criminal case to be a witness against himself; nor shall be deprived of life, liberty, or property without due process of law; * * *."

(C) Constitution of the State of New York,

Article I, Section 6:

> " * * * nor shall he be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property without due process of law; * * *."

(D) Code of Criminal Procedure of the State of New York:

(1) "Section 395. Confession of Defendant, When Evidence, and Its Effect.

A Confession of a defendant, whether in the course of judicial proceedings or to a private person, can be given in evidence against him, unless made under the influence of fear produced by threats, or unless made upon a stipulation of the district attorney, that he shall not be prosecuted therefor; but is not sufficient to warrant his conviction, without additional proof that the crime charged has been committed."

(2) "Section 165. Defendant, Upon Arrest, to be Taken Before Magistrate.

The defendant must in all cases be taken before the magistrate without unnecessary delay, and he may give bail at any hour of the day or night."

(3) "Section 464. Effect of Granting New Trial.

The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew; and the former verdict cannot be used or referred to, either in evidence or in argument."

(4) "Section 544. New Trial.

When a new trial is ordered, it shall proceed in all respects as if no trial had been made."

(E) Penal Law of the State of New York.

"Section 1844. Delaying to Take Person Arrested for Crime Before a Magistrate.

"A public officer or other person having arrested any person upon a criminal charge, who wilfully and wrongfully delays to take such person before a magistrate having jurisdiction to take his examination, is guilty of a misdemeanor."

(F) New York City Criminal Courts Act.

"Section 101. Courts to be Held Daily in Each District.

"Except as otherwise provided in this section, there shall be a city magistrate's court held daily in every court district, and unless otherwise directed by the chief city magistrate, each city magistrate's court shall be open every day at nine o'clock in the morning, and shall not be closed before four o'clock in the afternoon, and the city magistrate assigned thereto shall be in attendance thereat except during a reasonable recess."

(G) Civil Practice Act of the State of New York.

"Section 352. Physicians, Dentists and Nurses Not to Disclose Professional Information.

"A person duly authorized to practice physic or surgery, or dentistry, or a professional or registered nurse, shall not be allowed to disclose any information which he acquired in attending a patient in a professional capacity, and which was necessary to enable him to act in that capacity; * * *."

Authorities Relied Upon

See:

Stroble v. *California,* 343 U. S. 181, 190;
Rochin v. *California,* 342 U. S. 165;
Gallegos v. *Nebraska,* 342 U. S. 55;
United States v. *Carnignan,* 342 U. S. 36;
Watts v. *Indiana,* 338 U. S. 49;
Turner v. *Pennsylvania,* 338 U. S. 62;
Harris v. *South Carolina,* 338 U. S. 68;
Haley v. *Ohio,* 332 U. S. 596;
Adamson v. *California,* 332 U. S. 46;
Malinski v. *New York,* 324 U. S. 401;
Ashcraft v. *Tennessee,* 322 U. S. 143;
McNabb v. *U. S.,* 318 U. S. 332;
Lyons v. *Oklahoma,* 322 U. S. 596;
Lisenba v. *California,* 314 U. S. 219;
Vernon v. *Alabama,* 313 U. S. 547;
Lomax v. *Texas,* 313 U. S. 544;
White v. *Texas,* 310 U. S. 530;
Couty v. *Alabama,* 309 U. S. 629;
Chambers v. *Florida,* 309 U. S. 227;
Pierre v. *Louisiana,* 306 U. S. 352;
Brown v. *Mississippi,* 297 U. S. 278;
Bram v. *United States,* 168 U. S. 352.

Basis of Jurisdiction

It is respectfully submitted that this Court has jurisdiction of this petition for certiorari under Sections 1257 (3) and 2101 (c), Title 28, United States Code and Rule 38-1/2 of this Court, such petition being one to review the final judgment of the Court of Appeals of the State of New York rendered October 24, 1952.

The judgment affirmed a judgment for sentence of death; and in said Court of Appeals petitioner especially set up and claimed, under the Fifth and Fourteenth Amendments of the Constitution of the United States, the rights, privileges and immunity against being deprived by the State of New York of his rights and liberty without due process of law, "and" as certified by the Court of Appeals, "this point was considered and necessarily decided by this Court" (order amending Remittitur, dated November 25, 1952).

> "Upon the appeal herein there were presented and necessarily passed upon questions under the Constitution of the United States: Whether the defendant was deprived of due process guaranteed by the fifth and fourteenth amendments thereof in the admission into evidence of the confessions of the defendant and in the admission into evidence of the testimony given by defendant at a prior trial. This court held that the rights of the defendant under the Fifth and Fourteenth Amendments of the Constitution of the United States had not been violated or denied."

Reasons Relied Upon for Allowance of the Writ

The Court of Appeals of the State of New York has decided several federal questions of substance in a way probably not in accord with applicable decisions of this Court.

WHEREFORE, your petitioner, Camilo Weston Leyra, respectfully prays that a writ of certiorari may issue out of and under the seal of this Court, directed to the Court of Appeals of the State of New York, commanding the said

Court to certify and send to this Court for review and determination as provided by law this cause and a complete transcript of the record and all the proceedings had herein; that the judgment and decision of the Court of Apepals of the State of New York affirming the judgment in this cause may be reversed and that the petitioner may have such other and further relief in the premises as to this Court may be just and proper.

Dated: New York, January 9th, 1953.

HARRY G. ANDERSON
Counsel for Petitioner

FREDERICK W. SCHOLEM
Counsel for Petitioner

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

We hereby certify that we have examined the foregoing petition for a writ of certiorari and that in our opinion it is well founded and the cause is one in which the petition should be granted.

HARRY G. ANDERSON
Counsel for Petitioner

FREDERICK W. SCHOLEM
Counsel for Petitioner

Sworn to before me this
9th day of January, 1953.

FREDA GINDER
Notary Public, State of New York
No. 31-6525050
Qualified in New York County
Certificates filed with:
Bronx, Kings County Clerks
New York, Bronx, Kings Register's Offices
Term expires March 30, 1954

APPENDIX "A"

First Opinion of Court of Appeals

Dated — April 12, 1951

302 N. Y. 355

Harry G. Anderson and Frederick W. Scholem, New York City, for appellant.

Miles F. McDonald, Dist. Atty., Brooklyn, (William I. Siegel, Brooklyn, of counsel), for respondent.

FROESSEL, *Judge.*

On the afternoon of Tuesday, January 10, 1950, Camilo Leyra, Sr., seventy-five years old, and Catherine, his wife, eighty years old, were found dead in their rear apartment on the first floor of premises 105 Quincy Street, Brooklyn. Death resulted in each case from a fractured skull, caused by several blows from a hammer. Their son, Camilo Leyra, Jr., fifty years old, is the defendant in this action. He now stands convicted of the murder of both parents, and has been sentenced to death on each of said convictions.

The verdict rests largely upon alleged confessions of the defendant. If they were properly received in evidence, followd by proper instructions from the court, the verdict would be clearly warranted, and we could not interfere with the execution of sentence for these brutal crimes. The conclusion is inescapable, however, that grave and prejudicial errors were committed with respect to these alleged confessions, so fundamental in nature as to require a reversal and a new trial. To hold otherwise would ordain the rule that the fundamental rights of a defendant to a fair trial under our laws may be deliberately disregarded if the evidence, however improper, points to the defendant's

guilt. "Such a course will simply mean in the long run the abolishing of all forms of law taught by experience to be necessary to the protection of the innocent". *People* v. *Marendi,* 213 N. Y. 600, 619, 620, 107 N. E. 1058, 1064.

It appears from the evidence in this record that defendant led a somewhat unusual life. He worked for his father as a salesman in the latter's business; at the same time he was separately engaged, on the father's premises in a partnership with one Herrschaft who was also an employee of the father; defendant also worked as night bartender in a cabaret or night club in the Greenwich Village section of New York City. For at least a year prior to the time in question, defendant claimed he had slept but four hours a night. He had a wife and three children who lived in their home in New Jersey, and whom he visited regularly at least once a week, usually over Saturday night; at the same time, however, he maintained an apartment in Greenwich Village which he shared with his paramour.

Although suspicion was not at first directed toward defendant, it was not long before the attention of the police focused upon him. He was subjected to their routine questioning on the evening of the homicides and on the following day, Wednesday, and, while a written statement was taken from him containing no admissions, he was not detained. He denied all knowledge with respect to the crimes, and told the police of his movements on the day of their commission, which included a visit to his wife in New Jersey in the morning, and attendance at his office in the afternoon, thereby tending to establish an alibi. Inasmuch as his father had not appeared at his office that day, defendant, his partner, Herrschaft, and his cousin, Valdes, called at the father's home at about 3:30 P.M., when the homicides were discovered. Defendant appeared visibly shocked by the discovery, and later stated that he

had been fearful for his parents' safety due to the deterioration of the neighborhood, and because they had had some trouble with people in the vicinity.

Because of a statement made to the police by defendant's paramour with respect to defendant's new clothing, the police inquiry continued, and defendant was taxed with discrepancies in his alibi. After accompanying detectives on Thursday morning to various places in Manhattan to check his statements, he remained in the custody of the police for all practical purposes until he was arraigned on Saturday morning, two days later. There is no evidence that the police offered him any violence during that time, but he was subjected to much questioning by detectives. Among them was Captain Meenahan, the officer in charge of the homicide squad, who questioned him intermittingly from two o'clock Thursday afternoon, throughout the night, and until about nine o'clock Friday morning. In relation to later events, it may thus be noted that defendant had no sleep whatever that night.

During this questioning, defendant made a number of very damaging admissions, to the effect, contrary to his previous statements, that, although his memory was not entirely clear, he thought he must have been at his parents' home on the preceding Tuesday morning, at or about the time of the commission of the homicides. He told of arguments with his father over the preceding weekend, and said, "Let me think this thing out." After numerous other admissions, defendant finally said, "I must have been there; I remember; definitely I was there. * * * I am certain I was there—Captain, I was there. * * * Captain, it was me. Who else could it be?" He then described how he met his mother at the door, giving all the deails of that episode, but did not admit the homicides.

At about 9:00 A.M. he was taken by detectives to attend the funeral of his parents, and upon his return to the police station signed a consent to remain in police custody. There after he was taken by two detectives to a hotel in Brooklyn where he went to a barbershop, had lunch, and was allowed to go to bed for an hour and a half, after which the detectives awakened him and returned him to the police station at about 5:00 P. M.

Defendant's principal assignments of error relate to the events which took place subsequently that evening, when he is alleged to have made several confessions. He claims (1) that these alleged confessions were obtained by unlawful methods and their admission in evidence constitutes reversible error; (2) that the court's instructions were erroneous, and (3) that the alleged confessions were obtained by hypnosis and their receipt in evidence was prejudicial error.

Not content with the admissions already made by defendant to Captain Meenahan, the latter, at about 7:00 P. M. on that evening, introduced defendant to a physician, who is also a specialist in neurology and psychiatry, a psychologist, and one who uses the technique of psychoanalysis in his practice. This doctor, unconnected with the police department or the prosecutor's office, had been called to the police station by the District Attorney, who outlined the case to him. The doctor had also been "briefed" by Captain Meenahan, as is manifest from the questions he asked. He agreed to talk to defendant upon condition that there be no one else in the room; he knew, however, that the room was wired and that the interview would be electrically recorded by a recording machine, which was specially set up that day. The police and the District Attorney were in the basement of the police station, where

they overheard the entire interview and permitted it to continue uninterruptedly.

The doctor spent an hour or an hour and a half with defendant. A transcript of the recorded interview shows that he told defendant at the outset: "I'll tell you what the purpose of my talk to you is. I want to see if I can help you." To this defendant answered: "Yes, Doctor." The doctor asked him about his sinus condition and the treatment he had had, and in the course of the interview said: "I'm your doctor." The transcript further discloses that on at least forty occasions the doctor in one way or another promised to help defendant, and on one occasion said: "I know you are in a little trouble. We do sometimes things that are not right, but in a fit of temper or anger we sometimes do things that we aren't really responsible for. I want to see whether or not you did something but which you've done in a fit of temper or anger. Do you understand me? A. Yes." Defendant told the doctor he was "very tired. I had two hours sleep. Just now they woke me up That's since Tuesday. Well, there were questions, after questions after questions by the thousands. * * * The only thing is I'm very tired. I didn't feel as tired before I went to bed as I do now. You know (interruption)". This interruption was said to be noise, but no one knows what else defendant said here. It happened numerous times throughout the recording. So with whispers, identified by the doctor as sounds made by defendant when he did not speak audibly. In these respects the statement is definitely incomplete. Defendant then stated that his sinus was "bothering" him "something terrible", and that for the past two years he had averaged over a hundred hours of work a week without vacation. After more conversation, the following took place:

"Q. I want you to recollect and tell me everything. I am going to make you remember and recollect back and bring back thoughts—thoughts which you think you might have forgotten. I can make you recollect them. It's entirely to your benefit to recollect them because, you see, you're a nervous boy. You got irritable and you might have got in a fit of temper. Tell me, I am here to help you. A. I wish you could, Doctor.

"Q. I am going to put my hand on your forehead and as I put my hand on your forehead, you are going to bring back all these thoughts that are coming to your mind. I am going to keep my hand on your forehead and I am going to ask you questions and now you will be able to tell me."

This technique—of promising help, such as "We'll help", "Everybody will help you", "We're with you one hundred percent", "We'll play ball with you"; placing his hands on defendant's head; "making" him recollect; minimizing the homicides by suggesting they were done in a fit of temper saying, "Morally, you are not to be condemned, right? A. Right"; commanding defendant to look at him, to open and close his eyes; suggestions to defendant as to what he should say—runs all through the transcript of the recording.

The doctor was making some progress in breaking down defendant and getting some admissions, knowing that defendant was under "tension", "pale", his mouth was "dry", and despite defendant's frequent "I can't remember", "Doc, I'm trying so hard", "Doctor, I'm exhausted, so please be patient." The doctor kept at him: "See, I can make you talk very truly. I can give you an injection now." Near the end of the interview the following occurred:

Appendix "A"

"Q. You have a much better chance to play ball (Noise) than if you say you don't remember. If you tell me that you were in a fit of anger, that you were angry, that you just swung the hammer but if you tell me that you don't remember, then you will be working against yourself. Where will it get you? A. At that point there, I was so mad. I was like white hot metal. I was so mad. I was never mad at anyone in my life * * * (Noise) * * * "Q. Do you feel better? * * * (Noise) * * * Do you want coffee? A. I drank coffee all night long * * * (Noise) * * * " (asterisks *sic*).

What happened during these "Noise" periods, we do not know; why the doctor suddenly asked defendant after an interruption, "Do you feel better?", followed by another interruption, is unexplained. In any event, the doctor continued with this significant question: "Q. These people are going to throw the book at you unless you can show that in a fit of temper you got so angry that you did it. Otherwise they toos [toss] premeditation in and it's premeditation. See?" The import of this language should not be overlooked.

After some more coffee, defendant asked to speak to Captain Meenahan, whereupon he made a full and detailed confession to both homicides, in the course of which he stated he lost his temper and was overcome by a fit of anger and rage. Following his confession to Captain Mennahan, he told his partner, Herrschaft, who had been directed by a detective to be present, that he "did it." Thereafter and during the same evening, defendant again confessed these crimes to two assistant district attorneys, who took the written statement from him offered in evidence. He was fingerprinted that night and arraigned the next morning.

[1, 2] The chief issue raised by defendant at the trial is concerned with the claim that defendant was hypnotized by the doctor; that all of the confessions of Friday evening were made under that hypnotic influence; and that they were involuntary and untrue. He denied that he killed his parents, and asserted that he did not know what happened within a few minutes of the time he started talking to the doctor and the following Sunday morning, when he claims to have recovered volition and memory while in jail. He further stated that the doctor had made various gestures, first with his hands and then with some object, after which he recalled nothing. After defendant testified, followed by two psychiatrists who were called on his behalf, one of whom stated that the doctor's actions could have been nothing but hypnotism, the doctor was called in rebuttal, asserting unequivocally that he had not hypnotized this defendant.

Since the issue of hypnotism was one of fact concerned largely with the credibility of defendant as against that of the doctor, and that issue was quite fully and impartially presented to the jury, there is no reason why we should now interfere with that finding. People v. Peller, 291 N. Y. 438, 446, 52 N. E. 2d 939, 942. Because the jury decided adversely to defendant on this issue, however, it does not necessarily follow that the confessions obtained Friday evening were voluntary within the meaning of section 395 of the Code of Criminal Procedure or that there was no violation of the requirements of due process; and because defendant denied having made these confessions, he is not precluded from contending that in the event it be determined that he did make them, they were in violation of constitutional and statutory safeguards. U. S. Const., 14th

Amendt.; N. Y. Const., art. 1, §6; Code Crim. Proc. §395; People v. Joyce, 233 N. Y. 61, 71, 134 N. E. 836, 840; Lee v. State of Mississippi, 332 U. S. 742, 744-745, 68 S. Ct. 300, 92 L. Ed. 330; Ashcraft v. State of Tennessee, 322 U. S. 143, 151-154, 64 S. Ct. 921, 88 L. Ed. 1192; White v. State of Texas, 310 U. S. 530, 532, 60 S. Ct. 1032, 84 L. Ed. 1342.

[3, 4] We are thus squarely confronted with the question as to whether or not the admissions in defendant's statement to the doctor were properly received and submitted to the jury, as evidence from which they might determine his guilt. We think not, and, under the circumstances here disclosed, the trial court should have so determined as a matter of law; it is the duty of the court to reject a confession if a verdict that it was freely made would be against the weight of the evidence. People v. Doran, 246 N. Y. 409, 159 N. E. 379; People v. Valletutti, 297 N. Y. 226, 78 N. E. 2d 485. Bearing in mind the undisputed setting in which this interview was arranged and recorded, while defendant was in custody of the police; defendant's psysical and mental condition at the time, already alluded to; the psychiatrist, calling himself defendant's doctor, playing upon the latter's natural fears and hopes, pressing his hands upon defendant's head with accompanying commands, and suggesting details to an unwilling mind by persistent and unceasing questioning; informing defendant that he was not morally responsible; making deceptive offers of friendship and numerous promises, express and implied; giving assurances in a psuedo-confidential atmosphere of physician and patient; and all the attendant circumstances taken together—this interview was a subtle intrusion upon the rights of defendant and was tantamount to a form of mental coercion, which, despite the good faith of the prosecution,

we may not countenance here. No such intrusion may be sanctioned in a system of law which is based upon the presumption of innocence, surrounded by the constitutional safeguards afforded to every individual. The doctor here did not tell defendant that he had been called into the case by the District Attorney; that the latter and the police were listening to their conversation; that defendant could have his own doctor or lawyer or any one else present; he conspicuously omitted to tell defendant that he was under no duty to speak or that anything he might say could be used against him. See People v. Fernandez, 301 N. Y. 302, 333, 93 N. E. 2d 859; People v. Esposito, 287 N. Y. 389, 398, 39 N. E. 2d 925, 928, 142 A. L. R. 956.

[5, 7] We are, of course, not unmindful of the fact that some of these circumstances, standing alone, such as defendant's being in custody of the police, Murphy v. People, 63 N. Y. 590; People v. Perez, 300 N. Y. 208, 90 N. E. 2d 40, or mere failure to warn defendant that he was under no obligation to speak or that anything he might say could be used against him, People v. Randazzio, 194 N. Y. 147, 87 N. E. 112, would not constitute ground for excluding his confession. But here we have much more. Moreover, while deception alone, or a mere violation of confidence by a doctor in the sense that he has voluntarily disclosed to the police a confidential communication received in the usual practice of his profession, may not render a confession invalid, see People v. Wentz, 37 N. Y. 303; People v. Buffom, 214 N. Y. 53, 56, 57, 108 N. E. 184, 185, 186, this court is unwilling to assent to the doctrine that representatives of the State may thus employ a relationship they established between the doctor and this defendant, which is of a character that our public policy holds privi-

leged, Civil Practice Act, §352, in order to obtain a confession out of defendant's own mouth without warning and under the circumstances here disclosed. People v. Fernandez, supra; People v. Esposito, supra; People v. Furlong, 187 N. Y. 198, 212, 79 N. E. 978, 983. If a physician may be thus used, then why not a lawyer or a clergyman? The essential fairness which is supposed to form the warp and woof of our fabric of justice would certainly be wanting if practices such as these were to be approved. See People v. Levan, 295 N. Y. 26, 64 N. E. 2d 341.

[8, 10] We have held that an involuntary confession is by its very nature evidence of nothing. People v. Valletutti, supra, 297 N. Y. at page 231, 78 N. E. 2d at page 487. Moreover, our Federal Constitution, 14th Amendt., is a bar to the conviction of any individual in our courts of justice by means of a coerced confession. Ashcraft v. State of Tennessee, supra. We have a like provision in section 6 of article I of our State Constitution. A denial of due process has been defined as the failure to "observe that fundamental fairness essential to the very concept of justice. * * * Such unfairness exists when a coerced confession is used as a means of obtaining a verdict of guilt." Lisenba v. People of State of California, 314 U. S. 219, 236-237, 62 S. Ct. 280, 290, 86 L. Ed. 166. Not only is the use of a coerced confession in obtaining a conviction a violation of due process, but, if such confession is admitted in evidence, that is sufficient to void the conviction regardless of other evidence which might nevertheless demonstrate guilt, Malinski v. People of State of New York, 324 U. S. 401, 65 S. Ct. 781, 89 L. Ed. 1029, see, Note, 93 L. Ed. 115; Watts v. State of Indiana, 338 U. S. 49, 69 S. Ct. 1347, 93 L. Ed. 1801; Turner v. Commonwealth of Pennsylvania, 338

U. S. 62, 69 S. Ct. 1352, 93 L. Ed. 1810; Harris v. State of South Carolina, 338 U. S. 68, 69 S. Ct. 1354, 93 L. Ed. 1815; Haley v. State of Ohio, 332 U. S. 596, 68 S. Ct. 302, 92 L. Ed. 224; Ashcraft v. State of Tennessee, supra; Chambers v. State of Florida, 309 U. S. 227, 60 S. Ct. 472, 84 L. Ed. 716.

[11] We recognize that due process is not lacking where upon facts *permitting different conclusions* it is left for the jury, under a proper submission, to say whether or not there was coercion, Malinski v. People of State of New York, supra; Lisenba v. People of State of California, supra; Lyons v. State of Oklahoma, 322 U. S. 596, 64 S. Ct. 1208, 88 L. Ed. 1481, but here the method employed is not controverted and the statement itself is beyond dispute, for it is recorded. The transcript of the recording clearly discloses that the interview took place in an atmosphere of the utmost pressure, and in a manner and with a skill possible only to an experienced psychiatrist, unfamiliar with an accused's fundamental rights. As the prosecutor said of this psychiatrist in his summation: "with his superior mental powers, his studies of psychology, he was able to accomplish what a brow-beating policeman might not have been able to obtain." This was an eloquent tribute to the efficacy of mental coercion over physical.

Torture of the mind is just as contrary to inherent fairness and basic justice as torture of the body. A confession by which a person forfeits his life must be grounded on reasoned and voluntary choice. We would have to close our minds to the plain import of what occurred to deny that here was a deliberate attempt to extract a confession through the ceaseless pressure of a skillful psychiatrist by his peculiar technique, claiming to be defendant's doctor, promising to help him, giving assurances and at

the same time conducting an unrelenting interrogation of the exhausted accused. Aside from constitutional objections we have not yet reached the stage where medical science, represented by an accord among its experts, establishes the trustworthiness of a confession induced by the means here adopted. See 3 Wigmore on Evidence [3d ed.], §841a; People v. Forte, 279 N. Y. 204, 206, 18 N. E. 2d 31, 32, 119 A. L. R. 1198. Due process of law guaranteed by our State and Federal Constitutions commands that no such practice as revealed by this record shall send an accused to his doom, regardless of the brutality of the crimes with which he is charged.

[12, 13] While it is true that the statement in question was admitted as part of the People's case by way of rebuttal on the issue of hypnotism, yet, for the reasons hereinbefore assigned, the admissions contained therein should not have been received and permitted to go to the jury as evidence from which they might determine defendant's guilt. Although defendant vacillated with respect to his objections to this statement to the doctor, his counsel did attack it on the broad ground that defendant's will was wholly subservient by reason of hypnotism. Although the attack on that ground was rejected by the jury, this failure did not militate against his right to claim that his confession was nevertheless involuntary, particularly in view of the fact that after the court's charge his counsel excepted "to the whole charge of the Court on the question of a valid confession". In any event, in a capital case we have the power to order a new trial in the interests of justice, whether or not an exception shall have been properly taken in the court below. Code Crim. Proc., §528.

[14] Whether the coercion which we find implicit in defendant's statement to the doctor extended over and into the later confessions to Meenahan, Herrschaft and the assistant district attorneys remains a question of fact for determination by the jury, and this question was never properly submitted to them. These confessions should have been separately considered in the light of the coercion existing at the time of defendant's statement to the psychiatrist, and only if the jury were satisfied beyond a reasonable doubt that such coercion had ceased to influence defendant could they consider the later confessions. Only thus would due process of law be accorded defendant. Lyons v. State of Oklahoma, supra.

[15] Another alleged infirmity in defendant's statement to the doctor is urged upon it. It is said that this statement contained promises of leniency which might be attributed, under the circumstances, to the District Attorney. Code Crim. Proc., §395; People v. Kurtz, 42 Hun 335; People v. Reilly, 224 N. Y. 90, 120 N. E. 113. The court at first instructed the jury that "There is no claim here that the District Attorney induced this defendant to make a confession upon the promise that he will not be prosecuted therefor." Defendant's counsel duly excepted, and requested an appropriate charge from the court, which might eliminate premeditated murder. After some colloquy the court agreed, withdrew its original instructions in this respect, and then charged the jury in effect that they had to find a promise of complete immunity by the doctor or none at all, and only if the jury found that the former induced the confession might they acquit. While this may have been inadvertent on the part of the trial court, this instruction, to say the least, was misleading and did not

cure the original instruction excepted to by defendant and which the court agreed to correct, and may well have been detrimental to defendant, particularly in the light of the doctor's statement to him that; "unless you can show that in a fit of temper you got so angry that you did it * * * it's premeditation. See?" People v. Mleczko, 298 N. Y. 153, 162, 81 N. E. 2d 65, Code Crim. Proc. §528. Moreover, here again the jury should have been instructed to consider separately the later confessions, in the light of any promise that may have been made during defendant's statement to the doctor. Lyons v. State of Oklahoma, supra.

While portions of the closing statements of the prosecutor relating to defendant's criminal record, and statements of the doctor concerning defendant's guilt and that he was lying, of which the learned court below took cognizance, were highly improper, they and other errors assigned require no further comment in view of the conclusion we have reached. However shocking the crimes of which defendant was convicted, his life may not be forfeited in the light of the foregoing prejudicial errors, which deprived him of his substantial rights, accorded under our laws. People v. Moran, 246 N. Y. 100, 106, 158 N. E. 35, 37; People v. Levan, supra; People v. Mleczko, supra; People v. Samuels, 302 N. Y. 163, 173, 96 N. E. 2d 757, 762.

The judgments of conviction should be reversed and a new trial ordered.

LOUGHRAN, *C. J.*, and LEWIS, CONWAY, DESMOND, DYE and FULD, *JJ.*, concur.

Judgments of conviction reversed.

APPENDIX "B"

Second Opinion of Court of Appeals

Date — October 24, 1952

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, *v.* CAMILO WESTON LEYRA, Appellant.

Decided October 24, 1952.

DYE, J. When we reversed the prior judgment of conviction and ordered a new trial on the ground that the defendant's confession to Dr. Helfand was coerced as a matter of law, we thereby ruled it out for any further consideration on the issue of defendant's guilt (*People* v. *Leyra,* 302 N. Y. 353). By this ruling we did not invalidate the statements subsequently made by defendant to other persons and specifically left their validity open for separate consideration by a later jury as an issue of fact whether all or any of such statements depended on the mental coercion practiced by Dr. Helfand and then "only if the jury were satisfied beyond a reasonable doubt that such coercion had ceased to influence defendant could they consider the later confessions * * * (*Lyons* v. *Oklahoma, supra*) [322 U. S. 596]." (*People* v. *Leyra, supra,* p. 366.)

At the prior trial it had also been contended that a statement by Dr. Helfand contained a promise of leniency which might be attributed under the circumstances to the District Attorney. This required no definitive ruling from us as we had already declared the confession invalid for coercion, but we did not thereby overlook the possible influence of the alleged promise on the later statements, by way of inducement, and just as in the case of the mental coercion, we specifically left it for the jury to consider *separately* in the light of any promise of leniency, for it was only in

that manner that due process could be afforded (*Lyons* v. *Oklahoma, supra; Malinski* v. *New York,* 324 U. S. 401).

According to the record now before us, the Helfand confession was again received in evidence "merely on the question as to whether or not whatever statements the defendant made * * * were inspired" by Dr. Helfand, an issue raised by defense counsel. This was received after the trial court had cautioned counsel at length, followed by a most explicit and detailed instruction to the jury as to its illegality phrased in most simple and understandable language that they might not consider it on the issue of guilt under "any circumstances", but were limited to a consideration of its effect on the later confessions, and that these too were to be entirely disregarded if found to be dependent upon it in any respect whatsoever, a distinction which each individual juror signified that he understood. The Trial Judge did not stop there but dealt with it in his main charge and we believe fully and adequately by pointing out again and again that as a matter of law the confession made to Dr. Helfand was not to be considered on the issue of guilt. Moreover, he was careful to instruct the jury as to the defendant's contention leaving them to say with what force and effect "the coercion and promise * * * did in fact carry over and into each of the subsequent confessions" at the same time giving like instruction as to the People's contention, leaving it for the jury to say whether the later confessions made to other persons "were entirely voluntary and not induced by any promise of leniency."

In this manner and by this means the defendant's statement to Dr. Helfand was effectively insulated from the jury for consideration on the issue of guilt and was made available to them for the sole and limited purpose of saying whether or not the later statements made to others were

dependent in any way on coercion or inducement, coupled with the clear and positive instruction that if so found to be, it was "worthless as evidence". Such submission for separate consideration was in obedience to our specific ruling at the prior trial.

When the Trial Judge charged that as a matter of law a promise of leniency had been made by Dr. Helfand, he did not thereby make that statement "the law of the case" to such an extent as to deprive the jury of the benefit of his instruction as to "carry over and inducement". That was the precise issue they were required to pass upon. The "law of the case" governing the jurors in their deliberations is to be found in the charge in its entirety and is not to be taken from a ruling concerning the limited nature and effect of a single item of evidence, particularly, when the point said to be prejudicial, as here, has been specifically excluded. The law governing the retrial of this case was explicitly laid down by us at the prior trial which was that the statement to Dr. Helfand was coerced and worthless as evidence. The circumstance that the Trial Judge also said it was worthless, because a promise had been made as a matter of law, did not in any way prejudice the defendant. It was, if anything, to his advantage.

The judgment of conviction should be affirmed.

FULD, J. (dissenting). To see this case whole and in proper focus, it must be borne in mind that defendant's conviction rests solely upon his confessions and that the trial court so charged the jury, advising that, absent those confessions, "defendant must be acquitted, for the reason that the Court rules, as a matter of law, that all of the other evidence in the case * * * even if accepted by the jury as true, is insufficient upon which to predicate a verdict of guilty."

Appendix "B"

The trial judge charged unequivocally that Dr. Helfand had promised defendant, "in order to induce him to confess," that he would not be prosecuted for murder in the first degree, that such promise was authorized by the district attorney and that defendant confessed in reliance upon it. Consequently, as the trial court went on to charge, that confession was inadmissible as a matter of law. (See Code Crim. Pro. §395.) In view of that charge—which, of course, became the law of the case—it necessarily follows, as a matter of ineluctable logic, that any and all other confessions to the district attorney or those associated with him in the investigation and prosecution of this very homicide, must also be deemed to have been induced by that promise, and likewise inadmissible. Accordingly, when the court further instructed the jury that it might find that the confessions to assistants of the district attorney and to a police captain—made within an hour or two after immunity had been promised—had not been induced by the promise, it pursued a course that was not only opposed to logic, but incompatible with the law of the case. That was error highly prejudicial to defendant.

Nor does the existence of the confession that defendant made to Herrschaft, his friend and business associate, change the situation or permit an affirmance. True, that confession may stand in a category different from those made to prosecutor and police; other considerations, considerations separate and apart from the district attorney's promise, may have prompted defendant to confess to his friend. I am willing to assume, therefore, that the court was warranted in leaving to the jury the question whether or not the promise induced defendant's confession to Herrschaft, but that does not dispose of the matter. Since the jury also had before it the two confessions made to the law

enforcement officials, and since those confessions played a not unimportant part at the trial, no court can say that the jury, in reaching its verdict, either relied solely upon the confession to Herrschaft or disregarded entirely the other confessions. That being so, the conviction cannot be upheld. (Cf. *Stroble* v. *California*, 343 U. S. 181, 190.)

I would reverse the judgment and order a new trial.

LEWIS and DESMOND, JJ., concur with DYE, J.; FROESSEL, J., concurs for affirmance under the provisions of section 542 of the Code of Criminal Procedure; FULD, J., dissents in opinion in which LOUGHRAN, Ch. J., concurs; CONWAY, J., not sitting.

Judgment of conviction affirmed.

IN THE

Supreme Court of the United States

October Term 1952

CAMILO WESTON LEYRA,

Petitioner,

—against—

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

Opinions Below

The opinion of the Court of Appeals of the State of New York is reported in 302 N. Y. 353, a copy of which is in Appendix "A" attached to the petition. The opinion on the second appeal to the Court of Appeals is reported in 304 N. Y. 468 and can be found in Appendix "B" attached to the petition annexed hereto.

Statement of Jurisdiction, Questions Presented and Facts

For brevity, there will not be repeated here the Statement of Jurisdiction, the questions presented and the pertinent factual matter, all of which appear in the petition to which this brief is annexed.

Argument

I.

Petitioner contends that the due process clause of the Fourteenth Amendment was violated by reason of the fact that there was admitted into evidence alleged confessions of the petitioner which were obtained by Dr. Max Helfand, a psychiatrist, the duly authorized agent of the district attorney, after mental coercion was practiced upon the petitioner. Petitioner further contends that the due process clause of the Fourteenth Amendment was also violated by reason of the fact that the duly authorized agent of the district attorney promised the petitioner that if he confessed he would not be prosecuted for murder in the first degree.

Petitioner contends that the Fifth Amendment to the Constitution of the United States was violated by reason of the fact that the petitioner was compelled to be a witness against himself in that his testimony given at a prior trial was read into evidence, over objection and exception, at the present trial at which the petitioner did not take the witness stand and was not a witness.

Petitioner further contends that the Fourteenth Amendment of the Constitution of the United States was violated in that he was interrogated by the police for four nights and four days without arraignment, during which time he was questioned in relays by the police and asked thousands upon thousands of questions. This interrogation was immediately followed by the employment of Dr. Max Helfand, a psychiatrist, who had previously been briefed by the district attorney and who threatened to give the petitioner an injection to make him talk. This psychiatrist further represented himself to be the petitioner's doctor, prom-

ised to help the petitioner and also promised that if the petitioner confessed he would not be prosecuted for murder in the first degree (see *Haley* v. *Ohio*, 332 U. S. 596 and *McNabb* v. *United States*, 318 U. S. 332, 342, 343). Under the Code of Criminal Procedure of the State of New York, Section 165 provides that the defendant must in all cases be taken before the magistrate without unnecessary delay. This was deliberately violated. The Penal Law of the State of New York, Section 1844, provides:

> "A public officer or other person having arrested any person upon a criminal charge, who wilfully and wrongfully delays to take such person before a magistrate having jurisdiction to take his examination, is guilty of a misdemeanor."

The New York City Criminal Courts Act, Section 101, provides that courts are held daily in each district of the City of New York, are open every day at 9:00 o'clock in the morning and shall not be closed before 4:00 o'clock in the afternoon.

During the four days of interrogation by the police of the petitioner, the petitioner emphatically denied any connection whatsoever with the crime. When the police failed to obtain the confession after four days of questioning of the petitioner, they reported this fact to the District Attorney of Kings County who thereupon personally employed a psychiatrist, Dr. Helfand, without limitation as to the methods to be used by him to extract a confession from the petitioner. The district attorney heard over the loud speaker the technique used by the psychiatrist, as well as the threats and promises made by the psychiatrist, but the district attorney made no effort to repudiate any of the promises or threats made by Dr. Helfand, nor did he discourage Dr. Helfand from the use of mental coercion, etc.

The alleged confessions were plainly the product of the suction process of interrogation and, therefore, the reverse of voluntary.

It is significant that the district attorney made no effort to disavow any of the promises or acts committed by the psychiatrist. It is significant to note that neither the district attorney nor the assistant district attorneys, who subsequently took the alleged confessions, apprised the petitioner of his constitutional rights. Indeed, upon the first trial, the district attorney approved the methods of Dr. Helfand and as stated by Mr. Justice Froessel in his opinion in the Court of Appeals (302 N. Y. 353 at p. 364; see Appendix "A"):

> "As the prosecutor said of this psychiatrist in his summation: 'With his superior mental powers, his study of psychiatry, he was able to accomplish what a brow-beating policeman might not have been able to obtain'. This was an eloquent tribute to the efficacy of mental coercion over physical."

All of the aforementioned facts were undisputed on the first trial as well as during the present trial.

It is important at this point to call attention to the fact that the psychiatrist employed by the district attorney, Dr. Max Helfand, falsely represented himself to be the petitioner's doctor called in to treat his sinus condition. The Civil Practice Act of the State of New York, Section 352, provides:

> "A person duly authorized to practice physic or surgery or dentistry, or a professional or registered nurse, shall not be allowed to disclose any information which he acquired in attending a patient in a

professional capacity and which was necessary to enable him to act in that capacity."

The disclosure by the psychiatrist, Dr. Max Helfand, of information obtained from the petitioner was a distinct violation of this statute.

Judge Froessel stated at page 363 of his opinion:

> "If a physician may be thus used, then why not a lawyer or a clergyman? The essential fairness which is supposed to form the warp and woof of our fabric of justice would certainly be wanting if practices such as these were to be approved."

The court was compelled to charge the jury, as a matter of law, in the present trial (fols. 2678-2687):

> *"I charge you gentlemen as a matter of law, that the so-called Helfand confession was not voluntarily made: that it was due to mental coercion practiced by the physician upon the defendant; that in and of itself, renders it worthless as evidence of guilt."* (Emphasis ours.)

The trial court instructed the jury further:

> *"I charge you also as a matter of law that this so-called Helfand confession is invalid and may not be considered by you as evidence of guilt on the further ground that Dr. Helfand, who was then acting for the District Attorney, made a promise to the defendant in order to induce him to confess, and, thus, did induce him to confess by reason of said promise."* (Emphasis ours.)

This instruction was required by reason of the opinion of Judge Froessel in the Court of Appeals on the first appeal. This opinion was concurred in by all of the judges.

The court further charged:

> *"In arriving at a solution to these problems, I charge you that you are bound to consider the established fact that Dr. Helfand practiced illegal coercion upon the defendant and made authorized promises of leniency to him."* (Emphasis ours.)

At folio 2687, the trial court charged the jury:

> *"Gentlemen, if all of the confessions are rejected by the jury, the defendant must be acquitted, for the reason that the court rules as a matter of law that all of the other evidence in the case offered by the prosecution, even if accepted by the jury as true, is insufficient upon which to predicate a verdict of guilty."* (Emphasis ours.)

For purpose of brevity the petitioner will not repeat the technique pursued by the psychiatrist, Dr. Helfand, since it is graphically described in detail by Judge Froessel, at pages 359 to 361. In clearly recognizing the mental coercion practiced upon the petitioner by the psychiatrist, Dr. Max Helfand, Judge Froessel further stated at page 364 of his opinion in the first appeal:

> "Torture of the mind is just as contrary to inherent fairness and basic justice as torture of the body. A confession by which a person forfeits his life must be grounded on reason and voluntary choice. We would have to close our minds to the plain import of what occurred to deny here was a deliberate attempt to extract a confession through the ceaseless pressure of a skillful psychiatrist by his peculiar technique, claiming to be the defendant's doctor, promising to help him, giving assurances and at the same time conducting an unrelenting interrogation

> of the exhausted accused. Aside from constitutional objections, we have not yet reached the stage where medical science represented by an accord among its experts establishes the trustworthiness of a confession induced by the means here adopted. Due process of law guaranteed by our State and Federal Constitutions demands that no such practice as revealed by this record shall send an accused to his doom, regardless of the brutality of the crimes with which he is charged."

The petitioner contends that all of the alleged confessions are actually in fact but one confession since the confession began with Dr. Max Helfand, the psychiatrist, and continued without pause or interruption and followed one after another with the assent of the district attorney; the petitioner further contends that these alleged confessions were all infected with the virus of mental coercion. All of the alleged confessions took place on the same night of January 13th, 1950, and continued without pause for a period of four hours. These facts were not disputed by the district attorney.

It is also significant to point out that throughout the recording of the inquisitorial tactics pursued by the psychiatrist, Dr. Max Helfand, there were recorded numerous instances of "whispers" and "noises" and interruptions as recorded on the tape recordings which mechanism was installed by the police and sanctioned by the district attorney who personally heard what was transpiring in the secret and private room on the upper floor of the police station. One does not know what occurred and what acts were committed by the psychiatrist on the petitioner during these periods of "whispers", "noises" and interruptions, since Dr. Helfand insisted upon being alone with defendant

during this unusual "sinus" treatment. It is obvious that this condition was imposed by Dr. Helfand since he did not wish to have witnesses to his illegal and unconscionable acts. Dr. Helfand tried to explain away these periods of noises, whispers and interruptions by saying that the noises emanated from the traffic on the street. One might well suspect that this unscrupulous psychiatrist, who threatened to give the petitioner an injection, during these periods of noises, whispers and interruptions, took from his pocket a needle or syringe and threatened to or actually did give the petitioner an injection of sodium pentathol or other truth serum. As Judge Froessel pointed out in his opinion, at page 361:

> "What happened during these 'noise' periods, we do not know; why the doctor suddenly asked defendant after an interruption, 'Do you feel better?' followed by another interruption is unexplained. In any event, the doctor continued with this significant question: 'Q. These people are going to throw the book at you unless you can show that in a fit of temper you got so angry that you did it. Otherwise they toos (toss) premeditatio in and it's premeditation. See?' The import of this language cannot be overlooked."

It is idle for the district attorney to contend that this threat to give the petitioner an injection did not carry over into all of the alleged confessions. It is further idle for the district attorney to contend that the promises made by his authorized agent, Dr. Max Helfand, did not carry over into all of the alleged confessions. The district attorney, who personally called Dr. Max Helfand and employed this psychiatrist, to extort a confession since the police were unable to obtain such a confession, then wrote a letter to

the Comptroller of the City of New York requesting the Comptroller to pay Dr. Helfand's bill totaling the sum of $2,175.00 (fols. 1577, 1578; Deft's Ex. 3), for his services rendered in obtaining this confession in which letter the district attorney stated, among other things: "Dr. Helfand was instrumental in obtaining the defendant's confession."

Petitioner's attorney offered in evidence the letter in question written by the district attorney. The district attorney, however, objected to this proof and the letter in question was marked for identification (Deft's Ex. "A"; fol. 1583; Appendix D, Brief p. 29).

II.

Upon the present trial the sole issue remains as to whether the mental coercion, exercised by Dr. Max Helfand, carried over into the alleged subsequent confessions as indicated by the Court of Appeals in its first opinion by Judge Froessel in reversing the first conviction. The district attorney's position upon the present trial was that Dr. Helfand's technique and methods were "severable from the confessions made to Captain Meenahan, Assistant District Attorneys Andreozzi and Gitlin, and the People's witness, Herrschaft." The district attorney took this position notwithstanding the trial court's charge that, as a matter of law, Dr. Helfand had employed "mental coercion" in his efforts to induce the petitioner to confess, and notwithstanding the further fact that the trial court charged the jury that as a matter of law Dr. Helfand promised the defendant that if he confessed, he would not be prosecuted for the crime of murder in the first degree.

Judge Fuld, in his dissenting opinion in which Chief Judge Loughran concurred, wrote:

"In view of that charge, which, of course, became the law of the case, it necessarily followed as a matter of ineluctible logic that any and all other confessions to the district attorney or those associated with him in the investigation and prosecution of this very homicide, must also be deemed to have been induced by that promise. Accordingly, when the court further instructed the jury that it might find that the confessions to the assistants of the District Attorney and to the Police Captain—within an hour or two after immunity had been promised—had not been induced by the promise, it pursued a course that was repugnant to the law of the case. That was error highly prejudicial to the defendant." (Italics ours.)

This point made by Judge Fuld with regard to the promise, or the view taken by Judge Fuld with respect to the promise, certainly is applicable to the mental coercion since as a matter of law and as a matter of fact mental coercion is much more effective to procure a confession than a promise. It must not be overlooked that the trial court instructed the jury that the methods used by Dr. Helfand was mental coercion and illegal. During the interrogation of the petitioner by Dr. Helfand, the doctor said, among other things, "I CAN GIVE YOU AN INJECTION." This is unquestionably the strongest type of mental coercion and the other methods employed, to wit, holding his hands on petitioner's head, rubbing petitioner's forehead, massaging the petitioner's temples and compelling the petitioner to open and close his eyes, to stare into the psychiatrist's eyes and much more to the same effect, and repeatedly stating on at least forty occasions: "I'm going to help you. I'm with you 100%. We are all working with you. I'm your doctor. I'm going to help you. I'm with you 100%. God will be with you."

There can be no question that the acts and the technique of Dr. Helfand were definitely mental coercion. It is significant that Dr. Helfand insisted, as a condition to his employment, that he be alone in the captain's room with the petitioner. It is obvious that Dr. Helfand did not want any witnesses to his illegal and unconscionable acts. Fortunately for the petitioner, the wire recordings reveal all of the technique except what occurred during the "whispers", "noises" and "interruption" periods.

The legal definition of coercion is set forth in 14 C. J. S. 1307:

> "Coercion. Although it is difficult to define the term sharply, coercion exists where one is, by the unlawful conduct of another, induced to do or perform some act under circumstances which deprive him of the exercise of his free will; it may be either actual (direct or positive), where physical force is put on a man to compel him to do an act against his will, or implied (legal or constructive) where the relation of the parties is such that one is under subjection to the other, and thereby constrained to do what his free will would refuse. Violence has been held not to be an essential element, for coercion is usually accomplished by indirect means, such as threats or intimidation, physical force being more rarely employed, and may include a compulsion brought about by moral force or in some other manner with or without physical force. Moreover, it has been held that coercion may be accomplished without threats. While coercion does not necessarily imply force and violence or threats of its immediate use, the word does imply necessarily an actual overriding of the judgment and will, and, in particular connections, by an act which is itself unlawful, but

> the mere giving of information on request and the presentation of facts does not constitute coercion."

As Judge Froessel of the Court of Appeals stated in reversing the first conviction at page 363:

> "If a physician may thus be used, then why not a lawyer or a clergyman? The essential fairness which is supposed to form the warp and wool of our fabric of justice would certainly be wanting if practices such as these were to be approved."

And later at page 364 the Court in referring to the summation of the district attorney in evaluating Dr. Helfand's services said:

> "As the prosecutor said of this psychiatrist in his summation: 'with his superior mental powers, his studies of psychology, he was able to accomplish what a brow-beating policeman might not have been able to obtain.' This was an eloquent tribute to the efficacy of mental coercion over physical."

The coercion was not of the old-fashioned brand. No hard-swinging rubber hose; no bright lights scorching the eyes of the suspect; no detectives getting tough and fresh in relays; no "can of bones" as in the case of *Lyons* v. *Oklahoma,* 322 U. S. 596. Not one of the old props familiar to this court. There were soft words only; quiet, coaxing words in an endless stream from a specialist in neurology and psychiatry. The relaxing fingers of the psychiatrist soothingly caressed the petitioner's forehead, neck and temples.

Then Dr. Helfand gave reassuring promises that he was really petitioner's doctor, intent only on helping him. The doctor then promised that if the petitioner confessed, peti-

tioner would not be prosecuted for murder in the first degree. Dr. Helfand then used his final weapon, "I CAN GIVE YOU AN INJECTION AND MAKE YOU TALK." Then this psychiatrist put words in the petitioner's mouth and thoughts in the petitioner's mind. Then came confession after confession without interruption or pause. Nobody, no matter how innocent, could withstand being exposed to "the ceaseless pressure of a skillful psychiatrist's peculiar technique."

Upon the present trial the district attorney took the position that the effect of the promise made to petitioner by Dr. Helfand hat he would not be prosecuted for murder in the first degree, if he confessed, came to an end when Dr. Helfand that he would not be prosecuted for murder tioner over to Captain Meenahan in the room where Dr. Helfand had operated. This contention is completely disproved by the fact that petitioner called the Captain "Doc" when the Captain took Dr. Helfand's seat in the inquisition room after Dr. Helfand had completed his technique (People's Ex. D1 and part of C3, p. 616).* The district attorney's contention is based solely upon the opinion given by Dr. Murphy, a psychiatrist designated by the trial court to be a witness for the prosecution (fols. 2261, 2262):

> "The Court: What about the promise?
>
> "The Witness: I don't know what effect the promise had. It is a thing which is something I cannot pass judgment upon.
>
> "The Court: In that particular instance?
>
> The Witness: That is right."

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* These recordings were put into evidence but were not transcribed for second trial. The statement in which petitioner called Captain Meenahan "Doc" appears at fol. 2211 of the first record and is contained in People's Ex. D1 and part of C in the present record.

Dr. Murphy also testified that in his opinion the mental coercion brought about by Dr. Helfand did not carry over to the alleged confessions made to Captain Meenahan and Assistant District Attorneys Andreozzi and Gitlin. Dr. Murphy had never seen the petitioner prior to this session in court and never examined the petitioner at any time. Therefore, Dr. Murphy's testimony was completely without value inasmuch as he had no actual knowledge of petitioner's mental and physical condition following Dr. Helfand's machinations which occurred two years before Dr. Murphy testified. Furthermore, the Court should bear in mind the important fact that the recording of what took place between Dr. Helfand and the petitioner was incomplete. As an indication of these, omissions, we quote from Judge Froessel's opinion:

> "The recording is replete with noises and interruptions" (fol. 822).

Dr. Helfand's testimony was to the effect that these noises proceeded from traffic on the street.

Judge Froessel continued in his opinion upon the first appeal at page 360:

> "The doctor was making some progress in breaking down defendant and getting some admissions, knowing that defendant was under 'tension', 'pale', his mouth was 'dry', and despite defendant's frequent 'I can't remember', 'Doc, I'm trying so hard', 'Doctor, I'm exhausted, so please be patient'. The doctor kept at him: 'SEE, I CAN MAKE YOU TALK VERY TRULY. I CAN GIVE YOU AN INJECTION NOW.' Near the end of the interview the following occurred:
>
> 'Q. You have a much better chance to play ball (Noise) than if you say you don't remember. If

you tell me that you were in a fit of anger, that you were angry, that you just swung the hammer, but if you tell me that you don't remember, then you will be working against yourself. Where will it get you? A. At that point there, I was so mad. I was like white hot metal. I was so mad. I was never mad at anyone in my life * * * (Noise) * * *

'Q. Do you feel better * * * (Noise) * * * Do you want coffee? A. I drank coffee all night long * * * (Noise) * * * (Noise) * * * (asterisks sic.)' ''

Judge Froessel's comment that, "What happened during these 'Noise' periods, we do not know; why the doctor suddenly asked the defendant after an interruption, 'Do you feel better?', followed by another interruption," is unexplained.

It thus appears without question that Dr. Murphy's opinion was worthless inasmuch as the proof upon the trial does not indicate what took place during these "Noise" periods.

The presumption prevails that the influence of the prior inducement continues and that the subsequent confession is the result of the same influence, which renders the prior confession inadmissible. (*People* v. *Sweetin,* 325 Ill. 245; *People* v. *Kurtz,* 42 Hun (N. Y.) 335, reargument denied 42 Hun 637.)

The trial court instructed the jury that, as a matter of law, Dr. Helfand's efforts resulted in mental coercion (fol. 2678). Dr. Murphy was asked to state his opinion as to whether the mental coercion was carried over during the later confessions to Captain Meenahan, Assistant District Attorneys Andreozzi and Gitlin.

At page 360 of Judge Froessel's opinion on the first appeal he wrote:

> "The doctor was making some progress in breaking down defendant and getting some admissions, knowing that defendant was under 'tension', 'pale', his mouth was 'dry', and despite defendant's frequent 'I can't remember', 'Doc, I'm trying so hard', 'Doctor, I'm exhausted, so please be patient', the doctor kept at him: *'See, I can make you talk very truly. I can give you an injection now.'* " (Our emphasis.)

Dr. Clarence H. Bellinger, a psychiatrist of the highest repute, was appointed by the trial court to be a witness for the petitioner. Dr. Bellinger was praised by Dr. Murphy, the psychiatrist who testified for the district attorney. Before expressing his opinion, Dr. Bellinger examined the petitioner at the jail and spent two hours with him (fols. 1958, 1959).

After hearing what had taken place between Dr. Helfand and the petitioner, Dr. Bellinger testified that, in his opinion, the mental coercion practiced by Dr. Helfand was carried over to Captain Meenahan, Herrschaft and Assistant District Attorneys Andreozzi and Gitlin. Dr. Bellinger stressed the fact that there was no interval or period of respite between the time when Dr. Helfand completed his labors and the time when Captain Meenahan, Herrschaft and Assistant District Attorneys Andreozzi and Gitlin came into the room, immediately following Dr. Helfand's unconscionable and illegal procedure.

In this connection we would point out that the trial judge joined in the examination of both Dr. Bellinger and

Dr. Murphy. Dr. Bellinger was very positive in his opinion that the mental coercion practiced by Dr. Helfand carried over to the subsequent confessions (fols. 2021-2027).

The trial court instructed the jury that, as a matter of law, the Helfand confession was not voluntarily made and that it was due to mental coercion practiced by Dr. Helfand upon the petitioner (fol. 2678). The trial court further instructed the jury that there was a burden upon the district attorney to establish beyond a reasonable doubt that Dr. Helfand, who at the time was acting in behalf of the district attorney, made a promise to the petitioner to induce him to confess and thus did induce him to confess, by reason of such promise of leniency; the said promise being, in fact, that if he made such confession he (the defendant) would not be prosecuted for the capital offense of murder in the first degree (see also trial court's charge at fols. 2681-2683).

As has already been pointed out, the district attorney upon this trial relied solely upon the opinion of Dr. Murphy. We submit that Dr. Murphy's wavering and uncertain testimony falls far short of establishing beyond a reasonable doubt that the confessions were voluntary. We earnestly submit that the life of the petitioner should not be terminated upon the basis of Dr. Murphy's testimony. This we earnestly contend would be a violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

This Court has held that it was incumbent upon it to "determine independently whether petitioner's confessions were so obtained, by review of the facts upon which the issue necessarily turns" (*Chambers* v. *Florida*, 309 U. S. 227, 229).

Petitioner objected to the introduction into evidence of alleged confessions obtained from him by Dr. Max Helfand, agent of the district attorney, the police and the assistant district attorneys through the use of mental coercion, threats, and promises that if petitioner confessed he would not be prosecuted for murder in the first degree.* Petitioner's testimony given on the first trial was read into the record at the second trial over objection and exception of petitioner, although petitioner did not take the witness stand during the second trial. The trial court overruled these objections and exceptions were duly taken. Petitioner's motion for a new trial in which these errors were specifically pointed out was denied by the trial court (fols. 165-192). Upon appeal to the Court of Appeals of the State of New York these two substantial constitutional questions were raised (see petition, p. 2) and decided adversely to the petitioner by the said Court through affirmance of the conviction by a divided court (see Appendix B of petition).

The material facts concerning the method of obtaining the alleged confessions and the facts concerning the reading to the jury of petitioner's testimony on the first trial, although petitioner did not take the stand on the second trial, are set forth and discussed in the argument herein.

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* The alleged confession to Dr. Max Helfand, the psychiatrist employed by the District Attorney, was barred by the Court of Appeals after the first trial. Yet the trial judge, Samuel Leibowitz, who presided at the first trial as well as at the second, completely disregarded instructions of the Court of Appeals and permitted this confession to be introduced over petitioner's objection and exception.

Errors Relied Upon

A.

THE COURT ERRED IN AFFIRMING THE CONVICTION OF PETITIONER BASED UPON CONFESSIONS OBTAINED BY MEANS OF MENTAL COERCION, DURESS, THREATS, INTIMIDATION, AND PROMISES OF IMMUNITY FROM PROSECUTION FOR THE CRIME CHARGED IN THE INDICTMENT IF PETITIONER CONFESSED, IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

B.

THE COURT ERRED IN AFFIRMING THE CONVICTION BASED UPON PETITIONER'S TESTIMONY READ TO THE JURY FROM THE RECORD UPON THE FIRST TRIAL, WHEN PETITIONER DID NOT TAKE THE WITNESS STAND DURING THE SECOND TRIAL, IN VIOLATION OF ARTICLE FIVE OF THE CONSTITUTION.

Summary of Argument

I.

Where substantial Federal questions have been raised and passed upon in a state court, this Court will make an independent examination of the evidence (*Haley* v. *Ohio*, 322 U. S. 596; *Malinski* v. *New York*, 324 U. S. 401; *Ashcraft* v. *Tennessee*, 322 U. S. 154; *Ward* v. *Texas*, 316 U. S. 547; *Lisenba* v. *California*, 314 U. S. 219; *Brown* v. *Miss.*, 297 U. S. 278.

II.

During all of this period from January 10th until January 14th, petitioner was held by the police without being arraigned or taken before a magistrate until after his alleged confession. The trial court in its charge admitted that this violation of the law had occurred (fol. 2697).

By reference to these undisputed facts, but one conclusion can be reached, namely, that petitioner's conviction herein must be reversed because it was based on confessions obtained through the use of coercion, intimidation, threats and promises of leniency, rendering their character involuntary in violation of rights guaranteed him by the Fourteenth Amendment. The facts and circumstances which were uncontradicted establish that the confessions were not the result of the free choice of the petitioner, but rather flowed from the long gruelling questioning, and without due process, and physical exhaustion brought about by the police, district attorney and the mental coercion, threats, and promises of Dr. Helfand.

The possibility of destruction of the rights of criminal defendants, so carefully protected by a wise judiciary, may well be accomplished by the use of technique such as those employed in this case.

It is submitted that all of the alleged confessions were tainted with the same illegality as the first; all confessions were made on the same night without interruption or pause. Furthermore, the petitioner, who had been without sleep for days, was under the same mental coercion, fear of threats of injection, and promises of immunity to prosecution of murder in the first degree if he confessed, when he made the subsequent confessions, as he was when he made the first one, which was ruled out by the Court of

Appeals in reversing the first conviction. That although the first confession was barred by the Court of Appeals in its first opinion, and although it was conceded by the district attorney to have been obtained by means of mental coercion and notwithstanding the fact that the trial court instructed the jury that it was illegal and must not be considered as evidence of petitioner's guilt, it was admitted in evidence over petitioner's objection and exception. All alleged confessions were made within a period of four hours on the same night.

POINT I

The subsequent confessions were so close in point of time and circumstance to the first, that they should have been ruled out, for the same reasons which vitiated the first confession and made it inadmissible.

There was a continuous unbroken incident from the mental coercion, threats, and promises which extorted the first confession to the obtaining of the subsequent confessions.

This Court, always zealous to protect the rights of the poor and downtrodden, had no difficulty in reversing a conviction obtained on a second confession in *Couty* v. *Alabama*, 309 U. S. 629. There the treatment was applied to the prisoner at a police station in Montgomery. He was then carried miles away to Kilby Prison where he made a second confession purporting to be without direct application of force and in the presence of persons not present in Montgomery.

The principle we here invoke is that stated by this Court in the case of *Rochin* v. *California*, 342 U. S. 165:

> "Applying these general considerations to the circumstances of the present case, we are compelled

to conclude that the proceedings by which this conviction was obtained do more than offend some fastidious squeamishness or private sentimentalism about combatting crime too energetically. It is conduct that shocks the conscience. * * * They are methods too close to the rack and the screw to permit of constitutional differentiation."

* * * * *

"Use of involuntary verbal confessions in State criminal trials is constitutionally obnoxious not only because of their unreliability. They are inadmissible under the Due Process Clause even though statements contained in them may be independently established as true. Coerced confessions offend the community's sense of fair play and decency. So here, to sanction the brutal conduct which naturally enough was condemned by the court whose judgment is before us, would be to afford brutality the cloak of law. Nothing would be more calculated to discredit law and thereby to brutalize the temper of a society."

* * * * *

"Adamson v. California, 332 U. S. 46, 68-123, 91 L. ed. 1903, 1917-1946, 67 S. Ct. 1672, 171 A. L. R. 1223, sets out reasons for my belief that state as well as federal courts and law enforcement officers must obey the Fifth Amendment's command that 'No person * * * shall be compelled in any criminal case to be a witness against himself.' I think a person is compelled to be a witness against himself not only when he is compelled to testify, but also when as here, incriminating evidence is forcibly taken from him by a contrivance of modern science. Cf. Boyd v. United States, 116 U. S. 616, 29 L. ed.

746, 6 S. Ct. 524; Conselman v. Hitchcock, 142 U. S. 547, 562, 35 L. ed. 1110, 1113, 12 S. Ct. 195; Bram v. United States, 168 U. S. 532, 42 L. ed. 568, 18 S. Ct. 183; Chambers v. Florida, 309 U. S. 227, 84 L. ed. 716, 60 S. Ct. 472.

"But I think that words taken from his lips, capsules taken from his stomach, blood taken from his veins are all inadmissible provided they are taken from him without his consent. They are inadmissible because of the command of the Fifth Amendment."

In the case of *Stroble* v. *California*, 343 U. S. 181, it was stated:

"If the confession which petitioner made in the District Attorney's office was in fact involuntary, the conviction cannot stand, even though the evidence apart from that confession might have been sufficient to sustain the jury's verdict. Malinski v. New York, 324 U. S. 401, 402, 404, 89 L. ed. 1029, 1031, 1032, 65 S. Ct. 781 (1945); Lyons v. Oklahoma, 322 U. S. 596, 597, note 1 88 L. ed. 1481, 1483, 64 S. Ct. 1208 (1944).

* * * * *

"My views on the illegality of confessions obtained between the time of arrest and arraignment are contained in Watts v. Indiana, 338 U. S. 49, 56, 57, 93 L. ed. 1801, 1806, 1807, 69 S. Ct. 1347, 1357; Turner v. Pennsylvania, 338 U. S. 62, 66, 67, 93 L. ed. 1810, 1814, 69 S. Ct. 1352, 1357; Harris v. South Carolina, 338 U. S. 68, 71-73, 93 L. ed. 1815, 1817, 1818, 69 S. Ct. 1354, 1357. The practice of obtaining confessions prior to arraignment breeds the third-degree and the inquisition. As long as it remains

lawful for the police to hold persons incommunicado, coerced confessions will infect criminal trials in violation of the commands of due process of law.

* * * * *

"This confession as well as subsequently obtained confessions were used at the trial. The fact that the later confessions may have been lawfully obtained or used is immaterial. For once an illegal confession infects the trial, the verdict of guilty must be set aside no matter how free of taint the other evidence may be. Malinski v. New York, 324 U. S. 401, 89 L. ed. 1029, 65 S. Ct. 781."

In the case of *Gallegos* v. *Nebraska,* 342 U. S. 55, it was stated:

* * * * *

"The use of any confession obtained in violation of due process requires the reversal of a conviction even though unchallenged evidence, adequate to convict, remains. Malinski v. New York, 324 U. S. 401, 404, 89 L. ed. 1029, 1032, 65 S. Ct. 781.

"Americans justly complain when their fellow citizens in certain European countries are pounced upon at all by state police, held in jail incommunicado, and later convicted of crime on confessions obtained during such incarceration. Yet in part * * * upon just such a confession, this Court today affirms Nebraska's conviction of a citizen of Mexico who can neither read nor understand English.

"I believe the Constitution forbids the use of confessions obtained by the kind of secret inquisition these deputies conducted.

"There are countries where arbitrary arrests like this, followed by secret imprisonment and systematic questioning until confessions are obtained, are still recognized and permissible legal procedures. See 'The Trap Closes' by Robert A. Vogeler with Leigh White, the Saturday Evening Post, November 3, 1951, pp. 36 et seq."

The principle we here invoke is also stated by this Court in the case of *Watts* v. *Indiana,* 338 U. S. 49, at pages 52 and 53:

* * * * *

"* * * But if force has been applied this court does not leave to local determination whether or not the confession was voluntary. There is torture of the mind as well as body; the will is as much affected by fear as by force. And then comes a point where this Court should not be ignorant as Judges of what we know as men.

* * * * *

"A confession by which life becomes forfeit must be the expression of free choice. A statement to be voluntary of course need not be volunteered. But if it is the product of sustained pressure by the police, it does not issue from a free choice. When a suspect speaks because he is overborne, it is immaterial whether he has been subjected to a physical or a mental ordeal. Eventual yielding to questioning under such circumstances is plainly the product of the suction process of interrogation and therefore the reverse of voluntary."

And as stated in *Haley* v. *Ohio,* 332 U. S. 596:

* * * * *

"If the undisputed evidence suggests that force or coercion was used to exact a confession, we will not permit judgment of conviction to stand, even though there might have been sufficient evidence for submission to the jury. Malinski v. N. Y., 324 U. S. 401.

* * * * *

"Neither man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law.

* * * * *

"* * * The 14th Amendment prohibits the police from using the private secret custody of either man or child as a device for wringing confessions from them."

In *Lyons* v. *Oklahoma,* 322 U. S. 596, 602, it is stated:

"When conceded facts exist which are irreconcilable with mental freedom, regardless of the contrary conclusions of the triers of the fact, whether judge or jury, this court cannot avoid responsibility for such injustice by leaving the burden of adjudication solely in other hands."

And at page 606:

"Even though approximately 12 hours intervened between the two confessions and even assuming that there was no violence surrounding the second confession, it is inconceivable under these circumstances that the second confession was free from the coercive atmosphere that admittedly impregnated the first one. To conclude that the brutality inflicted at the time of the first confession suddenly lost all its effect in the short space of 12 hours is to close one's

eyes to the realities of human nature. An individual does not that easily forget the type of torture that accompanied petitioner's previous refusal to confess, nor does a person like petitioner, so quickly recover from the gruesome effects of having a pair of human bones placed on his knees in order to force incriminating testimony from him."

It is submitted that the courts should scrutinize subsequent confessions with extraordinary care. Theoretical distinctions and gossamer technicalities should not cut down the great principle that an accused should be free from torture of the mind in order to render a confession admissible. This Court should not permit the constitutional guarantee to an accused to be weakened and diluted by any subterfuge.

The district attorney, an officer of the court and the representative of the law, was a party to this revolting inquisition, for it was the district attorney who personally called Dr. Max Helfand into this case, when the police could not extort a confession after four days of ceaseless interrogation. It was the district attorney, personally, who arranged to have the inquisition room wired, and a loudspeaker and recording device installed on the floor below. It was likewise the district attorney who personally remained on the floor below the inquisition room and listened to Dr. Helfand coerce the petitioner, threaten to give an injection, fraudulently represent himself to be petitioner's doctor, and to promise petitioner leniency if he confessed. It was the district attorney who although listening to this entire illegal and unconscionable procedure, failed to stop it. It was the district attorney who wrote to the Comptroller of the City of New York requesting Dr. Helfand's bill for services be paid. In said letter (Defendant's Ex. A for

Id.) the district attorney stated, "Dr. Helfand was instrumental in obtaining the confession. It is all too clear that petitioner's mind and will had been broken by the technique used by Dr. Helfand. Is it possible that this was done in the hope that the subsequent confessions could be procured more readily? How else to explain the necessity to obtain subsequent confessions.

Improper influence by the police and district attorney, through its duly authorized agent, Dr. Helfand, having been shown, common sense would indicate an exceedingly strong presumption that such influence continued at least for a period of four or five hours without pause during which time all the alleged confessions were made.

POINT II

Without the confessions improperly received in evidence the State has failed to make out a case.

The record is voluminous; many witnesses were paraded by the State before the jury. Yet, when the evidence is examined, it is curious how little the State proved against the petitioner. Indeed the trial court charged the jury at folio 2687:

> "Gentlemen, if all of the confessions are rejected by the jury, the defendant must be acquitted for the reason that the court rules, as a matter of law, that all of the other evidence in the case offered by the prosecution, even if accepted by the jury as true, is insufficient upon which to predicate a verdict of guilty."

CONCLUSION

This case presents a flagrant abuse of the fundamental rights of a person accused of crime. The entire evidence of the State is founded upon confessions which followed immediately after "menticide" * had been practiced on petitioner.

Americans justly complain when their fellow citizens in certain European countries are pounced upon at will by state police, held in jail incommunicado, mentally coerced and given truth serum injections, and later convicted of crime on confessions by means of this technique. The technique practiced upon petitioner by Dr. Max Helfand is identical with that used upon Cardinal Mindszenty, Robert A. Vogeler, William Oatis and Michael Shipkov, all of whom confessed to crimes they never committed. The mental coercion practiced upon these poor innocent victims continued, not for four or five hours, as is contended in petitioner's case, but for days and months until each was compelled to admit in open court to his misdeeds.

This petitioner was convicted on a record bare of any evidence against him except alleged confessions. This is a new method to pry a confession out of a defendant and, in our opinion, will always be referred to as the "Menticide case". A new weapon has been added to the torture rack.

In the case at bar the method employed to obtain the confessions is not controverted and the statement itself is beyond dispute, for it is recorded.

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* See "The Crime of Menticide" by Joost A. M. Meerloo, M.D., New York, published in The American Journal of Psychiatry Vol. 107, No. 8, February 1951. Excerpts in Appendix "C" page 27 of Brief.

Due process of law guaranteed by our State and Federal Constitutions commands that no such practice as revealed by this record shall send an accused to his doom, regardless of the brutality of the crimes with which he is charged.

It is respectfully submitted that the judgment of conviction should be reversed.

HARRY G. ANDERSON,
Counsel for Petitioner.

FREDERICK W. SCHOLEM,
Counsel for Petitioner.

APPENDIX "C"

"THE CRIME OF MENTICIDE"

by

JOOST A. M. MEERLOO, M.D.,
PROF. PSYCHIATRY, COLUMBIA UNIVERSITY, NEW YORK.

(Reprinted from THE AMERICAN JOURNAL OF PSYCHIATRY,
Vol. 107, No. 8, February, 1951)

"The techniques of terror that are paraded as justice by the authoritarian states arose with the development of civilization and were perfected by the Inquisition of the Middle Ages. Side by side with our growing understanding of the human mind has grown the knowledge that this same human mind can be kneaded like putty in the hands of unscrupulous inquisitors. The science of third degree and forcible suggestion develops apace and does not hesitate to draw on modern medical techniques and new findings from the fields of psychiatry and psychology to accomplish its ends.

Such an organized system of psychological intervention and judicial perversion, in which a powerful tyrant synthetically injects his own thoughts and words into the minds and mouths of the victims he plans to destroy by mock trial, may well be called menticide.

Menticide is a growing threat to mankind—a threat far worse than genocide.

Menticide is an attack on man's very mind, on his sovereign will and conviction. It destroys free thought and makes servile, mechanical instruments of his inviolate thought processes. In the hands of dictators and secret police, menticide is more deadly than lethal weapons, yet

it is still unrecognized as an official institution for the suppression of political opposition.

Imprisonment and repeated interrogation alone can tax human resistance. When physical torture is added the urge to confess 'according to prescription' is easily aroused. But even physical torture and third degree methods are not enough to extort confessions from the strong minds of spiritual leaders who have always lived by their convictions.

For these victims who symbolize opposition elements of the population, crude torture is often inadvisable, since physical abuse arouses mass indignation. More perverted techniques are needed that will evoke both public confession of conspiracy against the regime and a declaration of 'Conversion' to its idealogy. These gratifying results are achieved by mental torture and drugs.

In his expose on Cardinal Mindszenty's imprisonment, 'The Cardinal's Story,' Stephen K. Swift graphically describes three typical phases in the psychological 'processing' of political prisoners. The first phase is directed toward extorting confession. The victim is bombarded with questions for days and nights. He is inadequately and irregularly fed. He is allowed almost no rest and remains in the interrogation chamber for hours on end while his modern inquisitors take turns with him. Hungry, exhausted, his eyes blurred and aching under unshaded lamps, the prisoner becomes little more than a hounded animal.

To the horrors the victim suffers from without must be added the horror from within. He is pursued by the unsteadiness of his own mind which cannot always produce the same answer to a repeated question. As a human being with a conscience he is pursued by the hidden guilt feelings that undermine his rational awareness of innocence.

Appendix "C"

As a social being he is pursued by a need for companionship; as a private individual he is blackmailed by an inner need to be left alone and undisturbed, if only for a few moments.

Much as an animal is conditioned to perform tricks, the second phase of processing trains the victim to accept his own confession. False admissions are reread, repeated, hammered into his brain. He is forced to reproduce fantasied offenses, fictitious details that ultimately convince him of his criminal status. In the first stage he is hypnotized by others. In the second stage he is in a state of autohypnosis, convincing himself of fabricated crimes.

In the third and final phase, the victim, now completely conditioned and accepting his own guilt, is trained to bear false witness against himself and others.

Psychological attacks involving planned mental torture are, however, more than the human being can withstand. Menticide changes normal human wishes into pathological cravings.

The prisoner, equally dependent, is reduced psychologically to the status of the helpless infant. Ideals, standards, civilized concepts lose their significance under the stress of mental and physical torture, and all that remain are the primitive requirements to sustain life—sufficient food and sleep. Thus, at some point, capitulation in the form of false confession, rather than continued resistance, serves the need for infantile self-preservation.

The concept of 'menticide' indicates an organized system of judicial perversion and psychological intervention, in which a powerful tyrant transfers his own thoughts and words into the minds and mouths of the victims he plans to destroy or to use for his own propaganda. Modern psychiatry may deliver him several tools for this perversion."

APPENDIX "D"

OFFICE OF THE
DISTRICT ATTORNEY
OF KINGS COUNTY

MILES F. McDONALD
DISTRICT ATTORNEY

January 16, 1951

Mr. Edward Smith
Chief Auditor
Comptroller's Office
Municipal Building
New York City, New York

Dear Mr. Smith:

This letter is in reply to your recent inquiry by telephone concerning the bill of Doctor Max Helfand, submitted for his services rendered in the preparation of trial of the murder case of the People against Camilo Leyra.

The conferences set forth in Doctor Helfand's bill were held and were necessary in each instance as Doctor Helfand was instrumental in obtaining the defendant's confession.

In addition, Doctor Helfand was charged by the defense with hypnotising the defendant. Under the circumstances many lengthy conferences were held with the doctor.

Very truly yours,

MILES F. McDONALD
District Attorney
By /s/ John E. Cone
Assistant District Attorney

JEC/pl

Defendant's Exhibit "A" for identification

APPENDIX "E"

In the case of *Rex* v. *Booker*, 4 Dom. Law Rep. 795 (Alberta Supreme Court) an application was made by the Crown to admit a confession, in excluding the confession the Court stated at page 795:

> " * * * The Crown must establish it was a voluntary confession, all the facts bearing upon the issue must be considered carefully. * * *
>
> The Crown has employed as its agent Dr. Langsner, a man who calls himself a criminalogist and who claims to be able to obtain information by means which are not used by the ordinary individual. He says he can exercise hypnotic effects upon a subject by feeling the thoughts of the subject. Dr. Pope, Professor of Medicine in the University of Alberta, who gave evidence as to the influence of hypnotic power alleges that the effects of its exercise upon a subject may remain with the subject, and that the effect may still exist in the subject (p. 796): although not apparent to the ordinary observer and that the general effect upon the subject is to weaken his mental control.
>
> Dr. Langsner was present at the preliminary inquiry at Mannville as an ordinary spectator and had no interview or contact with the defendant then. The defendant was brought to the guard-room at Edmonton and the next day he was visited by Dr. Langsner in the guard-room at Edmonton. Dr. Langsner says he had no conversation with the defendant. He says his purpose was to obtain evidence as to the location of a rifle which had been used to cause the death of four persons for whose death the defendant is now being tried. The day following his

visits to the defendant at the guard-room he went to the scene of the murder accompanied by Sgt. Leslie and in a search of less than half hour by detective and himself a rifle was found in the wooded land near the scene of the murder, of the calibre of that used for shooting down the four persons.

Dr. Langsner made subsequent visits to the defendant in the guard-room and alleges there was no conversation with the defendant. His visits were admittedly for the purpose of obtaining a confession from the defendant. On the last visit Dr. Langsner informed the officers in charge they might expect a confession in a short time. In a few minutes the defendant informed the officer in charge he wanted to see Detective Leslie. Detective Leslie came in,—defendant then made the confession.

Under the circumstances, I am of the opinion that the Crown should clearly establish that the defendant's mentality was not affected by Dr. Langsner's visits. Dr. Langsner says he did not hypnotize the defendant and he seemed to be quite normal when Detective Leslie visited him. The evidence of Dr. Pope supports the hypothesis that although the defendant appeared to Detective Leslie to be normal yet the effects of hypnotism might still be present. Langsner's denial of hynotism (p. 979) must be viewed with suspicion in view of the admission that he obtained information as to the location of the rifle by feeling the defendant's thoughts and in view of the admission he can practice mesmerism and also his admission that his visits were for the purpose of obtaining a confession.

Appendix "E"

If the confession had been made to Detective Leslie under normal ordinary condition, I would have no hesitation of admitting it, but the fact that Langsner announced that the confession might be expected, that his announcement was followed by a desire to see Detective Leslie, and the time elapsing between those events being so short, raises in my mind a doubt as to the bona fide of the method used by Dr. Langsner during his visits with the accused.

In my opinion then the Crown has failed to discharge the onus that I have placed upon it of establishing that the defendant was not under the influence of mental suggestion exercised by Dr. Langsner and there I will not admit the confession. Application dismissed."

See also

People v. *Robinson,* 19 Cal. 40;
State v. *Strong,* 83 N. J. R. 177;
State v. *Exum,* 138 N. C. 599;
Louis v. *State,* 24 Ala. App. 120, 138 So. 904
Hypnotic Influence in Criminal Cases by H. M. Bannister, M.D., 51 Albany Law Journal 87.

APPENDIX "F"

A leading authority on mental coercion, Dr. August Forel, Professor of Psychiatry and Director of the Provina Asylum, Zurich, Switzerland, stated in his work entitled, HYPNOTISM OR SUGGESTION AND PSYCHOTHERAPY, at pages 282 and 292:

> "Just as one can wring a confession out of a child, a woman, or a weak man, of a suspicious deed by the power of skillful persuasion, so one can suddenly produce the suggestion in an innocent person that he is guilty. When this takes place, not only a complete confession of the crime, which he has not committed is made, but all sorts of details of the most concrete kind, as we have seen, are also hallucinated retroactively."
>
> "They are, for all intents and purposes, in the same condition for the moment as if they were drugged, or deeply idiotic, or even apparently dead."

In HYPNOTISM TODAY by Dr. Jean Bordeaux and Dr. Leslie M. Lecron, published by Gruene and Stratton, at pages 30, 31, 32 and 33 it is stated:

> "Fixation of the gaze on the eye of the operator offers some advantages and is a preferred method with us on healthy subjects, for we believe that quicker results follow. Hull agrees with this preference. Some suggestion is involved, for most subjects think the operator's fixed stare produces sleep. Personally we prefer to explain that it is only for attention.
>
> With this system, the operator should bring his own eyes within eight inches of those of the subject."

Appendix "F"

"Sensory fatigue is always an aid in bringing on hypnosis. A tired person is far more susceptible than one who is wide awake, and fatiguing the eyes by concentrating the gaze is a definite part of induction methodology."

Technique Developed By Braid-Bernheim:

"It is the eye—the most occult organ of all, on the supervicies of our body—which, by serving as a medium between that bit of metal or crystal and the brain, attunes the molecular vibrations of the nervous centers of the latter into unison (example equality in the number of their respective oscillators with the vibration of the bright object held. And, it is this unison which produces the hypnotic state. It is the eye—the chief agent of the will of the active operator."

Dr. J. Luys:—La Charite Hospital of Paris:

"Under hypnosis—the individual no longer belongs to himself; he is surrendered, an invert being."

" * * * a woman may become a mother without any trace existing of a criminal assault without the patient having the smallest recollection of what had passed after she had awakened."

"Sometimes, in the active condition, the state of lucid somnambulism, and even in the condition of simple fascination, the subject may be exposed to the influence of suggestions of the most varied kind on the part of the person directing his actions. He may be induced to become a homicide, an incendiary, or suicide, and all these impulses deposited in his brain during sleep become forces stored up, which will burst forth at a given moment."

Appendix "F"

Dr. H. H. Hart: Columbia University—Director of Neurological Clinic of the Vanderbilt Institute—

Points out that "hypnotism tends to increase suggestibility and that those who possess this feature (suggestibility) most abundantly are just as prone to accept unfavorable as favorable suggestion—if they are not controlled by constructive suggestion and the authority of the physician, they are just as apt to fall prey to destructive suggestion." (Journal of Nervous Mental Diseases, Nov. 1931.)

George Trumbull Ladd—11 Yale Law Journal 173, read before N. Y. Bar Ass'n, at page 176:

> "One of the most marked characteristics of the hypnotic state is what I will venture to call the process of 'decentralization' which goes on; that is to say physiologically considered, the higher cerebral centres lose their place of command; considered from the point of view of the conscious mental life, the person suffers a loss of the power of rational self-control. In a word, the hypnotized subject is in a condition of preparation to become the 'tool' of another—for evil as well as also for good."

At page 179:

> "It is undoubtedly theoretically possible to induce hypnotized subjects to falsify testimony against themselves, or against others, to persuade themselves that they remember committing crimes which they never committed, etc."

Appendix "F"

At page 188:

"Of course, the legal practice under English and American Law would not allow evidence obtained in this way, from the accused against himself, to be used for his conviction, however highly probable it might be that the evidence was a sufficient proof of the facts. For there is a very great danger that the patient will, by suggestion, falsify his own memory and sincerely but falsely accuse himself. In this connection we are reminded of the numerous cases of children or even of adults who have been urged into the confession of crimes which they never committed."

APPENDIX "G"

"BREAKDOWN"

THE STORY OF MICHAEL SHIPKOV IN THE HANDS OF THE SECRET POLICE.

Telling how the Communist secret police are able to pry confessions of treason out of men and women who love their country.

Page 5.

For the first time a man "broken" by the Communist police and made to sign one of the "confessions" with which we have become tragically familiar has had the spiritual fortitude to piece together again the shattered remnants of his personality and reveal in detail how the "confession" was extracted. The man is Michael Shipkov, a Bulgarian, a member of the staff of the American Legation in the Bulgarian capital, Sofia.

Page 18.

The interrogation took on again, unrelaxed. Here I want to describe their method of interrogation; you are a spy and a traitor, tell us what tasks you were given to do, who gave them to you, in what manner and with whose help you achieved them and to whom and in what manner did you report. No further indication and no generalities, no overall statements of guilt accepted. And this went on, hour after hour, throughout the night, throughout the day, without respite or end.

Page 22.

Out of the jumbled memories, some impressions stand out vivid. One: they are not over interested in what you

tell them. It would appear that the ultimate purpose of this treatment is to break you down completely, and deprive you of any willpower or private thought or self esteem, which they achieve remarkably quickly. And they seem to pursue a classic confession, well rounded off in the phraseology, explaining why you were induced by environment and education to enter the service of the enemies of Communism, how you placed your capacities in their service, what ultimate goal did you pursue—the overthrow of the people's government through foreign intervention. And they appear to place importance on the parallel appearance of repentance and self-condemnation that come up with the breaking down of their prisoner.

Page 23.

I wrote six lined pages, beginning with my unfortunate origin and education, my formation into a class enemy, then a description of my espionage with stress on each individual task—who had entrusted me with it, when, how I had achieved it, whom I had enrolled to help, how I had handed in my report. At the end, a plain statement of the purpose I had been pursuing—the destruction of the regime through foreign intervention. Signature after that—and although my deposition was controlled and checked paragraph by paragraph by the two lesser persons on duty, one of the superiors insisted that I add specific information as to my secret preference for the British and on my spying for them on the Americans.

Page 26.

However, with the first acceptance, my power of resistance grew weaker and I slipped steadily lower and lower, not only drawing punishment, but time and time again

speaking of others, friends and relatives of mine, involving them in deeds or thoughts utterly untrue, unfounded, slanderous. And then the feeling of resistance is wholly broken; and I remember going deeper and deeper in this awful disloyalty, feeling utterly degraded and wretched, and yet powerless to protest and deny. * * * At the end, when I wrote down the confession of guilt and repentance, I remember that the whole thing appeared fantastic and ridiculous but it seemed to give them complete satisfaction.

Page 27.

* * * and possible others, involving any or all of them in subversive espionage or other punishable acts is false, untrue, and dragged out of me against my will, against any knowledge of actual truth, under duress. * * * I also want to testify that all the admissions of guilt forced from me by the militia involving espionage or subversive activity of my employers of the British Mission or later the American Legation, requested of me by these institutions or by any of their officers, and executed by me, as the militia has made me indicate, are false, untrue, imaginary and preposterous and have no foundation whatever.

Page 29.

I recall some other details that might throw further light on this experience of mine, I believe I explained that the endless interrogation seemed to be intended (a) as breaking down resistance and paralyzing independent thought, and (b) as adapting the "confessions" obtained to their pattern. And whatever did not fit that pattern was brushed aside, and the subject was maintained until at the end some incredible story would seem to fit and satisfy them.

Appendix "G"

LIFE MAGAZINE—JUNE 20th, 1949

"WHY THEY CONFESS"

The hammering was done by the Soviet secret police, then known as the NKVD. Their "processing" had the desired effect on Fritzsche, who was broken to do what was wanted—without even being beaten or drugged.

Surprising as it sounds, a prisoner of the NKVD has rights, and his supreme right is to give the right answer. It is hammered into him that in the last instance his fate is in his own hands.

Weakened by hunger, exhausted by lack of sleep, hypnotically confused by the always glaring light and numbed by loneliness, Fritzsche was nearing a nervous breakdown, perhaps insanity.

Not that he had already made up his mind to "confess". But he had come to the point of facing the problem. And still he had suffered no beatings. He asserts that he never even heard of any. This is certainly a high tribute to the suggestive powers of a scientific horror treatment.

No "Gestapo methods" had been applied, no hypnotism, no drugs. This is one of the several explanations Fritzsche later gave for his collapse: "Western psychologists don't see the simple fact that hope is stronger than fear. Therefore hope is more willing to make concessions."